

MONTANA LEGISLATIVE HISTORY

Chapter 315 19 93

Bill H 338 S _____ Original bill & history C

H. Committee on Fish + Game

S. Committee on Fish + Game

Hearing Date(s) Feb 04 ☒ C

Hearing Date(s) Mar 11 ☒ C

Feb 16 ☒ C

Mar 18 ☒ C

_____ C

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_____ C

_____ C

Date Out Feb 12 ☒ C

Mar 18 ☒ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

HB 337 INTRODUCED BY D. BROWN, ET AL.
CREATE NONRESIDENT TEMPORARY-USE PERMIT FOR OFF-HIGHWAY
VEHICLES

1/23	INTRODUCED		
1/23	REFERRED TO HIGHWAYS & TRANSPORTATION		
1/23	FIRST READING		
1/28	FISCAL NOTE REQUESTED		
2/01	HEARING		
2/02	FISCAL NOTE RECEIVED		
2/02	FISCAL NOTE PRINTED		
2/02	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/04	2ND READING PASSED AS AMENDED	93	6
2/06	3RD READING PASSED	91	5
	TRANSMITTED TO SENATE		
2/09	FIRST READING		
2/09	REFERRED TO HIGHWAYS & TRANSPORTATION		
3/04	HEARING		
3/05	COMMITTEE REPORT—BILL CONCURRED		
3/06	2ND READING CONCURRED	36	6
3/08	3RD READING CONCURRED	41	7
	RETURNED TO HOUSE		
3/21	SIGNED BY SPEAKER		
3/24	SIGNED BY PRESIDENT		
3/29	TRANSMITTED TO GOVERNOR		
4/01	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 247		
	EFFECTIVE DATE: 10/01/93		

HB 338 INTRODUCED BY REAM, ET AL.
GENERALLY REVISE GAME FARM LAWS

1/25	INTRODUCED		
1/25	REFERRED TO FISH & GAME		
1/25	FISCAL NOTE REQUESTED		
1/25	FIRST READING		
2/01	FISCAL NOTE RECEIVED		
2/01	FISCAL NOTE PRINTED		
2/04	HEARING		
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/19	2ND READING PASSED	88	10
2/22	3RD READING PASSED	93	6
	TRANSMITTED TO SENATE		
3/01	FIRST READING		
3/01	REFERRED TO FISH & GAME		
3/11	HEARING		
3/22	COMMITTEE REPORT—BILL CONCURRED		
3/24	2ND READING CONCURRED	47	3
3/25	3RD READING CONCURRED	40	9
	RETURNED TO HOUSE		
4/02	SIGNED BY SPEAKER		
4/06	SIGNED BY PRESIDENT		
4/07	TRANSMITTED TO GOVERNOR		
4/12	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 315		
	EFFECTIVE DATE: 04/12/93		

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON FISH & GAME

Call to Order: By CHAIRMAN FOSTER, on February 4, 1993, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Mike Foster, Chair (R)
Rep. Chase Hibbard, Vice Chair (R)
Rep. Bob Ream, Minority Vice Chair (D)
Rep. Beverly Barnhart (D)
Rep. Bob Clark (R)
Rep. Fritz Daily (D)
Rep. Jim Elliott (D)
Rep. Duane Grimes (R)
Rep. Marian Hanson (R)
Rep. Dick Knox (R)
Rep. Bea McCarthy (D)
Rep. Brad Molnar (R)
Rep. Scott Orr (R)
Rep. Bill Ryan (D)
Rep. Emily Swanson (D)
Rep. Doug Wagner (R)

Members Excused: None.

Members Absent: None.

Staff Present: Doug Sternberg, Legislative Council
Mary Riitano, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 313, HB 338, SB 58
Executive Action: SB 58, HB 341

HEARING ON HB 338

Opening Statement by Sponsor:

REP. BOB REAM, House District 54, Missoula, stated illegal trade of wildlife, disease problems, importation of exotic species (those that are not native to Montana), hybridization between the species, and health concerns for rancher's livestock were the major concerns he had when he carried a game farm bill two years

ago. It began placing restrictions and tightening controls on game farming. Game farms are jointly managed by the owner and the Department. HB 338 is the result of the rulemaking process at the Department and a committee appointed by Governor Stan Stephens. Section one defines the specifications for a game farm. Section two defines penalties and the seizure of illegally possessed animals. Section three updates the application procedure for licenses. Section four is a new section and explains the criteria for issuance of license and fencing requirements. Section five sets the annual fee at \$200. Section six defines specifications for transferring a game farm license. Sections 12 and 13 set forth the procedures for revocation of game farm licenses. He felt that HB 338 is a compromise.

Proponents' Testimony:

Mr. Cork Mortensen, Executive Secretary for the Board of Livestock, distributed written testimony (EXHIBIT 1). He also distributed a proposed amendment (EXHIBIT 2).

Mr. Pat Graham, Director for the Fish, Wildlife, and Parks Department, circulated his written testimony (EXHIBIT 3). He also distributed a Guide to HB 338 (EXHIBIT 4).

Mr. Dave Majors, Montana Wildlife Federation, urged support for HB 338 and distributed written testimony (EXHIBIT 5).

Mr. Ron Bennett, Montana Wildlife Federation, felt the fees for game farms should be higher and there should be stiff gate protection regulations. Game farms owners should be held responsible for all studies and the expenses related to escaped game farm animals. Broken fences should be mended within 24 hours. In his opinion, penalties for operating a game farm without a license should result in felony charges rather than misdemeanor charges. He declared he was a proponent; however, he felt the language of HB 338 should be more direct, severe, and unquestionable.

Ms. Janet Ellis, Montana Audubon Legislative Fund, presented written testimony (EXHIBIT 6).

Mr. Gutkoski, Montana Wildlife Federation, presented written testimony (EXHIBIT 7).

Ms. Jan Hamer, Montana Bowhunters Association, asked for the committee's support of HB 338.

Mr. Tony Schoonen, Skyline Sportsman Association, offered written testimony in support of HB 338 (EXHIBIT 8).

Mr. Les Graham, Montana Breeders Association, declared the organization's support of HB 338. He said currently two herds of elk are left under quarantine regarding tuberculosis testing. One herd will probably be removed. Some concerns regarding

disease were not included in HB 338 because they are in the Department of Livestock statutes. The state veterinarian has authority, if he decides there is a serious threat, to take action.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

REP. CHASE HIBBARD asked Mr. Les Graham what the regulations are regarding game being imported into the state for game farms. Mr. Graham explained the Department of Livestock statutes do not differentiate between the type of animals. If any animal poses a threat, they are handled in the same manner. Currently, any elk coming into the state are held in quarantine to be tested for disease.

REP. BRAD MOLNAR asked Mr. Pat Graham why the license fee for game farms was so low and why the Department plans on subsidizing the industry \$40,000 in 1994 and \$14,000 in 1995. Mr. Graham said that there were several areas through their deliberation process which were not addressed. The license application and renewal fees needed more study. The industry agreed to a small increase. The Department has not been keeping track of when and how new legislative rules are implemented. It was difficult to reach a decision whether the size of farm or number of animals should be the main factor in determining fees. REP. MOLNAR asked why there was a drop of \$30,000 in one year. Mr. Graham said that the costs reflect the involvement in the rulemaking process, development of rules, public hearings, etc. The second year reflects their best estimate of the annual operating costs. REP. MOLNAR asked if the monitoring program will cost \$13,000, how much will licenses increase. Mr. Graham said that he didn't know.

REP. DICK KNOX asked Mr. Pat Graham what varieties of wildlife live on a game farm. Mr. Graham replied red deer, sika deer, and elk. During the last legislative session, the Department identified animals that posed threats for hybridization and banned them in the state or in certain parts of the state. Some of the banned species still exist on game farms. REP. KNOX inquired what the regulations the Department had regarding the sale and disposition of the banned animals and if they could be sold to residents. Mr. Graham said that he did not believe so. The Department would not license a game farm that does not currently have them so they could possess them. REP. KNOX asked if a game farm owned a banned animal, could they sell it. Mr. Graham said no, unless they have a license. REP. KNOX asked if they could be sold out-of-state. Mr. Graham said yes.

REP. BEA MCCARTHY asked Mr. Pat Graham why reindeer were not allowed west of the divide. Mr. Graham stated there is a limited

number of caribou that abide in the northwest corner of the state. It has been considered an endangered species and is not allowed west of the divide because of its disease problems.

REP. DOUG WAGNER asked Mr. Pat Graham if shooting an animal on a game farm is currently allowed. Mr. Graham said yes but it could not be removed. The tag issued is a special tag for game farms. The livestock procedure is used for transferring an animal. REP. WAGNER inquired if wolves are considered. Mr. Graham explained that wolves are not a game farm animal.

REP. EMILY SWANSON asked Mr. Pat Graham how much documentation exists on the capture of live animals. Mr. Graham replied investigations of some problems in that area are taking place. Mr. Les Graham said that he could not discuss it fully. If he were aware of someone breaking this law, he would turn the person in. REP. SWANSON asked if there were prior cases on record. Mr. Graham said that there are prior cases on record, and they date back to the 1970's. Attempts to prosecute have been made.

REP. BOB CLARK asked Mr. Pat Graham if bird farms have as strict regulations or do they pose the problem that big game farms do. Mr. Graham said that bird farms are covered under a different set of statutes. The problems are different. Zoo menageries are similar in regulations to game farms and they need to be reviewed.

REP. WAGNER asked why there is an immediate effective date. Mr. Pat Graham explained that due to the nature of the new criteria being put on the licensing, that it would be covering all game farms including those not yet being proposed. It would eliminate the Department receiving a flood of applications prior to the effective date. REP. WAGNER asked if it could just be placed on hold. Mr. Graham said that the current law is very specific. Within 30 days of the receipt of the game farm application, a permit must be issued.

REP. KNOX inquired how escaped animals were caught. Mr. Pat Graham replied that it was covered in the game farm rules. The owner is given a short period of time to recapture the animal before the Department takes action.

REP. CLARK asked Mr. Pat Graham if a hunter can shoot a hybrid if he comes upon it and then call a warden. Mr. Graham said that it would not be proper to shoot it because the hunter does not have the authority to do so. REP. CLARK directed the question to Mr. Les Graham. He agreed with Mr. Pat Graham. Elk in Montana have been tested. Red deer have been identified. The problem will come under control due to the rules.

CHAIRMAN MIKE FOSTER asked Mr. Les Graham for his response regarding the amendments distributed by the Montana Audubon Legislative Fund. Mr. Graham stated he did not have a chance to look them over. He said that perhaps it would be a good idea to

standardize the language. He stated, however, that he supported the bill and the amendment proposed by the Department. Mr. Pat Graham explained that the first amendment would not change the intent of HB 338. The proposed second amendment changes "big game" to "game animal." The reason "big game" was used is because of the fencing requirements. The third proposed amendment deals with the cost of licensing and that topic has been addressed. The fourth proposed amendment is in regard to the word "unacceptable." He said that the word is used as a value term and could be further defined in rulemaking. The fifth proposed amendment poses a question regarding the terms of a license. Mr. Graham explained there is a separate section for revocation. The Department felt that it was not appropriate to decide whether or not a license should be revoked in the license renewal process. The sixth proposed amendment could be clarified by referring to page 10, subsection (e). The Department's intention was transferring the license from individual to individual. The seventh proposed amendment questioned whether the \$1,000 is per penalty or per day. Mr. Graham stated that it was per penalty. Finally, the eighth proposed amendment addresses the possibility of the public's involvement in the issuance of a game farm license. The public's involvement is outlined on page five, subsection (3) which states, "Within 120 days of the acceptance of a complete application, the Department shall notify the applicant of its proposed decision to approve." The public may be involved in the Environmental Impact Study.

REP. WAGNER asked Mr. Graham when an Environmental Impact Study (EIS) is required. Mr. Graham said that the Environmental Assessment Process (EA) helps determine if a EIS is required. A mitigated EA allows the person requesting the license to take care of concerns the EA finds. The expenses for an EA are paid for by the Department. Mr. Bob Lane, Fish, Wildlife, and Parks Department explained that the statutes and rules provide that the cost of an EIS is paid by the applicant.

REP. SWANSON asked REP. REAM what was given up in HB 338. REP. REAM stated that there were several issues not dealt with due to lack of time or lack of consensus.

Closing by Sponsor:

REP. REAM stated that his major concerns are the exotic species and the hybrids coming into Montana. He felt that good controls must be maintained on them.

HEARING ON HB 313

Opening Statement by Sponsor:

REP. BEVERLY BARNHART, House District 80, Bozeman, stated that HB 313 provides out-of-state college students with an opportunity to purchase a fishing license for approximately the same price as a Montana resident. She presented a letter supporting HB 313 from

HOUSE OF REPRESENTATIVES

FISH & GAME

COMMITTEE

ROLL CALL

DATE

February 4, 1993

NAME	PRESENT	ABSENT	EXCUSED
VICE-CHAIRMAN CHASE HIBBARD	X		
VICE-CHAIRMAN BOB REAM	X		
REP. BARNHART	X		
REP. CLARK	X		
REP. DAILY	X		
REP. ELLIOT	X		
REP. GRIMES	X		
REP. HANSON	X		
REP. KNOX	X		
REP. MCCARTHY	X		
REP. MOLNAR	X		
REP. ORR	X		
REP. RYAN	X		
REP. SWANSON	X		
REP. WAGNER	X		
CHAIRMAN MIKE FOSTER	X		

EXHIBIT 1
DATE 2/4/93
HB 338

HB 338

Mr. Chairman and members of the committee, for the record my name is Cork Mortensen, executive secretary to the Board of Livestock. On behalf of that Board I rise here today in support of this legislation.

The Department of Fish, Wildlife and Parks, representatives from the game farm industry and the Department of Livestock have had a number of meetings during the past year and have arrived at a consensus on what we believe to be a workable piece of legislation.

The result in front of you addresses the concerns of the regulatory agencies involved as well as maintains the viability of the game farm industry. The Chairman of the Board of Livestock chaired this committee and he is pleased with the way this proposed legislation came out.

For those reasons, I urge you on behalf of the Board of Livestock to support this bill.

Thank you for your time and consideration in this matter. If you have any questions or need more information, I should be happy to respond.

Sincerely,



E.E. "Cork" Mortensen, Executive Secretary
To the Board of Livestock

EXHIBIT 2
DATE 2/4/93
HB 338

House Bill 338
Representative Bob Ream, Sponsor

Amendments Prepared by Lon Mitchell,
Staff Attorney for the Department of Livestock
February 4, 1993

Page 10, line 15
Following: "of livestock"
Strike: "and the department"

EXHIBIT 3
DATE 2/4/93
HB 338

HB 338
February 4, 1993

Testimony presented by Pat Graham, Dept. of Fish, Wildlife & Parks
before the House Fish and Game Committee

The game farm issues that Montana has been addressing in recent months are not unique to our state - they are regional, national, and even international in scope. The Department of Fish, Wildlife & Parks has focused its attention on several biological issues, namely: 1) introduction of diseases/parasites, 2) hybridization, leading to genetic pollution of native wildlife species, and 3) habitat degradation as a result of feral populations of escaped game farm animals. These concerns are not based on unfounded fears or speculations. These scenarios have played out elsewhere, resulting in permanent, irreversible damage to wildlife resources. In addition to biological considerations, there are other issues related to game farming, including criminal activities prompted by a lucrative market in live wildlife - as well as certain animal parts.

As public servants charged with protecting and perpetuating the state's wildlife resources, we take very seriously our responsibility to prevent these problems from occurring in Montana. It became clear about two years ago that existing statutes were inadequate, especially in light of regional and national growth in the game farming industry. About 15 months ago, at the direction

of HB 556 passed by the 52nd legislature, Fish, Wildlife & Parks initiated an effort to update outmoded game farm rules and statutes.

Like many of our sister states, responsibility for regulating operation of game farms in Montana is shared by the state's wildlife agency and its livestock agency. Within the past year, the Department of Fish, Wildlife & Parks has increased efforts in its areas of responsibility and the Department of Livestock has assumed new regulatory responsibilities. Joint adoption of new rules last spring by Fish, Wildlife & Parks and the Department of Livestock constituted the first step in providing needed protection for Montana wildlife resources and the livestock industry.

Last summer Governor Stephens directed his staff to appoint a working group on game farms. This group was directed to address major game farm issues; to try to come to agreement on how to address them; and develop legislation to be presented to the 53rd legislature. We at Fish, Wildlife & Parks are pleased that a group representing diverse interests could make such significant progress in addressing problems of major importance. We believe that this bill, the product of that group's deliberations, gives both our agencies the tools necessary to effectively regulate this industry. We also believe that this legislative package benefits the game farming industry by clearly defining minimum operating standards.

Due to the complexity of game farm issues, background information is included along with my testimony. For the sake of time, I will touch only briefly on the highlights of this bill:

- Section 1: Deletion of the shooting license (carcass tag issued by FWP) - which has been replaced by an inspection certificate issued by a DOL brand inspector (also mentioned in Sections 7 and 16). Thus the shooting tag requirement no longer serves any purpose. The reasons for this change include: 1) misuse of game farm shooting tags to harvest wild animals and 2) conformation with DOL inspection procedures for domestic livestock.
- Section 3: Outlines a process for review of game farm license applications, outlining FWP procedures in handling of applications and providing for MEPA compliance in FWP decisions regarding licensing.
- Section 4: Outlines qualification criteria for issuance of a game farm license - for both the license applicant and the physical location of the proposed game farm. It also grants the license applicant an opportunity for review of his/her application by the FWP Commission.
- Section 6: Provides for transferability of a game farm license if both the transferee and the facilities meet certain criteria.

- Section 7: Provides for marking of individual game farm animals. The new rules provide for an ear tattoo registered by DOL to indicate animal ownership and a FWP ear tag that facilitates identification of individual game farm animals.

- Section 8: Procedures for transportation and sale of game farm animals were rewritten to conform with DOL procedures, replacing FWP paperwork requirements with inspection by a DOL brand inspector.

- Section 10: Increases required game farm reports from one per year to 3 times per year. This is intended to clear up some long-standing problems with record keeping and reporting requirements. It doesn't triple the needed paperwork...rather, it requires that 1/3 of the currently required paperwork be submitted at the end of each of 3 reporting periods.

- Section 12: Outlines criteria for revocation of a game farm license and outlines a range of disciplines for various violations (providing some middle ground between no action and revocation). Existing statutes are inadequate for FWP to revoke the license of a proven bad operator. Revocation is a means to address problems of concern both to regulators and to the game farming community.

- Section 13: Outlines steps to be followed in a license revocation.

- Section 15: Provides a license applicant with an opportunity for a hearing in cases of license revocation, denial of renewal, or denial of a license transfer.

A GUIDE TO HB 338

COMPILED BY
MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS

In July 1992, Governor Stephens directed his staff to appoint a working group to address and resolve controversial game farm issues. In addition to addressing problems pertaining to regulation of the game farm industry, the group was directed to develop needed legislation. The working group on game farms was comprised of Wayne Phillips (Gov.'s office), Jack Salmond and Jim Hagenbarth (Board of Livestock), Bill Fraser, who was replaced by Cork Mortensen (as Executive Secty., Dept. of Livestock), Elaine Allestad and Bill Stratton (FWP Commission), Pat Graham (deputy director, FWP), Les Graham and Ward Swanser (Mt. Game Breeders Assoc.), Dave Majors (MT Wildlife Federation) and Bob Ream (state representative). Personnel from FWP and D. of Livestock served as staff to the working group.

The game farm working group successfully reached consensus on solutions to a number of major game farm problems and agreed on proposed legislation to address those issues. This summary is intended to facilitate review of HB 338 - which, pending a minor change in Section 7, is the product of deliberations of the game farm working group.

HIGHLIGHTS OF HB 338

SECTION 1. 87-4-406. Definitions.

(2) Definition for "facilities" added, to encompass perimeter fences, holding, handling and quarantine facilities.
(old 5) -Deleted- because game farm shooting licenses (carcass tags provided by FWP at a cost of \$15 apiece) will be replaced by a certificate of inspection issued by a D. of Livestock brand inspector.

SECTION 2. 87-4-407. License required -- penalty -- seizure.

(2) Clarifies that operation of an unlicensed game farm and possession of, or trade in prohibited animals are violations.
(3) provides for seizure and disposition of illegally held animals.

SECTION 3. 87-4-409. Application for license -- limitations....

(1) "on forms provided" clarifies that application for a game farm license is to be made on a FWP form.
(1)(c) "the name and address of the individual who will be the principal manager of the game farm" - provides a contact person who is responsible for the actual operation of the game farm (especially important in cases of corporate ownership and where the license applicant is located in another state).

(1)(f) in addition to fences, the term "facilities" includes gates, quarantine, holding and handling enclosures. The "location of perimeter fencing" (legal description, plotted on a topographic map or drawn on a scale map) is information that is prerequisite to evaluating the application.

(old 2) - deleted - (replaced by criteria in NEW SECTION 4).

(new 2, a&b) outline the procedure for review of game farm license applications and requires that the department determine within an initial 30-day period whether an application contains all the information needed for evaluation.

(3) the existing 60 day application review period is replaced by 120 days to provide adequate time for MEPA compliance (completion of an environmental assessment). A provision for an additional 180 days is included for the occasional cases that require an EIS for MEPA compliance. The provision to "approve with stipulations" provides a middle ground....rather than limiting decision on a license application solely to approval or denial. "And approval" of fencing added to reflect current practices.

NEW SECTION 4. Criteria for issuance of license - fencing and enclosure requirements.

(1 a - d) outline qualification criteria for a game farm license applicant.

(2 a - e) outline criteria for issuance of a game farm license.

(3a - d) outline criteria for denial or stipulations based on site-specific wildlife and habitat factors (modification of Colorado's language).

(3)(e) addresses public safety hazards related to shooting on the game farm premises.

(4) In the event that FWP proposes to deny or to issue a game farm license with stipulations, the applicant is provided an opportunity to propose mitigation measures, to be considered in the final decision.

(5) provides for commission review of the department's proposed decision regarding a game farm license application.

SECTION 5. 87-4-411. License and renewal fees.

Application and renewal fees were increased with the intention that license fees be studied further to ascertain appropriate cost and whether license fees should be prorated on the basis of acreage or total number of game farm animals....or some other basis. As part of further study of the issue, FWP was asked to begin maintaining record of the costs of administering game farm regulations.

SECTION 6. 87-4-412. Term of license - transferability.

(1) License renewal is contingent on compliance with records and reporting requirements.

(2a-c) provides for transferability of a game farm license if the transferee meets criteria outlined in Section 4(1); the facilities

are in compliance with requirements in effect at the time the original license was issued; and if the game farm is not quarantined - with the stipulations that prohibited species cannot be transferred with the game farm license and the transfer is not used as a means to evade requirements imposed on the licensee.

SECTION 7. 87-4-414. Game farm animals as private property.

(1) "raised" replaced with "possessed"; "property of the licensee" deleted to eliminate the perception that joint ventures are prohibited - and replaced with "for which the game farm licensee is responsible as provided by law" - to clarify that regardless of who owns individual animals on the premises, the licensee is ultimately accountable and responsible for them.

(2) "and in any manner" -deleted- as unnecessary and contradictory to other provisions of the statutes and rules.

(3) provides for marking game farm animals to facilitate animal ownership and individual animal identification

(old 4) deleted "game farm shooting license" (carcass tag) -- which is no longer necessary due to implementation of tattoo inspections by D. of Livestock.

(new 4) Game farm animals must be lawfully acquired by the licensee.

SECTION 8. 87-4-415. Transportation and sale of game farm animals - quarantine.

(old 1) and (old 2) replaced with language that conforms with D. of Livestock procedures for domestic livestock (including use of DOL brand inspectors).

SECTION 9. 87-4-416. Sale of game parts, meats and byproducts.

Changed to conform with D. of Livestock procedures (including use of DOL brand inspectors).

SECTION 10. 87-4-417. Records and Reporting.

Reporting requirements were changed from one report per year to three.

SECTION 11. 87-4-422. Rulemaking.

(1) Provision to accomplish necessary regulatory coordination with DOL.

(2) Several topics added that have been already been addressed through rule-making.

NEW SECTION 12. Revocation of license -- criteria-- penalties.

(1 a-i) outlines criteria for license revocation. The criteria are intended to define licensees who do not conduct their operations in a responsible manner.

(2) includes a distinction between "negligent" and "willful"

misconduct. In situations involving negligence, the licensee will be given notice and an opportunity to remedy the misconduct within 30 days.

(3) lists penalties for misconduct, providing a range of discipline, including revocation (avoids the dilemma of a choice between no discipline and revocation).

(3b) provides for a civil penalty not to exceed \$5,000, restitution for damages caused, or both.

(4) the penalty for a misdemeanor violation of the game farm statutes and rules is set at \$1000 to conform with other fish and game violations.

NEW SECTION 13. 87-4-423. Revocation of license.

(1) - (4) outline a license revocation procedure and a process for disposition of game farm animals in the event of license revocation.

SECTION 14. 87-4-424. Department restrictions on importation of certain species.

Added "habitat degradation or competition caused by feral populations of escaped game farm animals" - (primary reason for importation restrictions on deleterious species such as aoudad, tahr, chamois, wild hogs, etc.)

NEW SECTION 15.

Entitles a license applicant or licensee to notice and an opportunity for a hearing before an impartial hearing examiner under the Administrative Procedures Act upon denial or revocation of a license, denial of renewal, or withholding consent to transfer a license.

NEW SECTION 16. Repeals 87-4-421 Game farm shooting license

Deleted because it has been replaced by D. of Livestock procedures using DOL brand inspectors.

NEW SECTION 17.

Codification Instructions.

NEW SECTION 18.

Effective date is upon passage and approval.

OTHER ISSUES CONSIDERED BY THE WORKING GROUP ON GAME FARMS

It was suggested that following passage of game farm legislation during the 1993 legislative session, a working group on game farms should be formulated to accomplish the following: monitor implementation of new statutes and rules; address topics that were deemed to warrant additional study prior to initiating legislative action; and address items that would more appropriately be implemented through rule-making rather than legislation.

OTHER CONCEPTS BROUGHT UP BY THE WORKING GROUP, THAT WERE EITHER NOT RESOLVED, OR DEEMED TO REQUIRE FURTHER STUDY

- The concept of separating game farm licenses into a number of categories or classes to correspond to one or more of the following attributes: 1) primary purpose of the game farm (i.e. commercial, non-commercial), 2) type of operation (breeding stock, antler production, trophy shooting, venison, photography/filming subjects, etc.); 3) acreage; 4) total number of game farm animals; 5) and/or other criteria. FWP will develop an up-to-date data base that documents status quo. (further study)
- A corresponding fee structure (initial license application and renewal) tailored to various types of licenses and commensurate with the relative amount of regulation required for each license type (with fees possibly prorated according to criteria outlined above - or other factors). FWP will track costs incurred in regulation of existing game farms to provide data for further study of this issue. (further study)
- Separate a shooting license (trophy shooting by clients) from a general game farm license (raising of animals for purposes other than shooting), in part to address public safety issues related to shooting on game farms. This might be accomplished through establishment of several categories or classes of game farm licenses. (further study)
- Disposition of the "base number" of wildlife remaining in a new game farm enclosure after all efforts to remove them have failed. (further study)
- Regulation of antler buyers as a deterrent to trafficking in antlers from illegally taken wildlife (further study).
- Eliminating client shooting on game farms altogether (consensus not possible within the working group)
- Imposing importation restrictions on elk from areas where meningeal worm is endemic. (consensus not possible within the working group)
- Federal or state indemnity program to provide reimbursement for game farm animals destroyed due to bovine tuberculosis. (federal program has been proposed)

ISSUES BROUGHT UP BY THE WORKING GROUP
THAT MAY BE MORE APPROPRIATELY ADDRESSED THROUGH
RULE-MAKING RATHER THAN LEGISLATION

The following ideas and needed clarifications surfaced during deliberations of the working group. The language presented here serves only to document concepts that were discussed by the group and to serve as a starting point for future consideration of rule-making. At several times during group discussions, it was suggested that rule-making may be necessary to reflect new statutes. Needs for rule-making may become apparent as revised statutes are implemented and administered.

POSSIBLE RULE-MAKING NEEDS:

12.6.1507 DEFINITIONS Add a definition of escaped, something along the lines of the following:

(16) "Escaped" means occurrence of game farm animal(s) outside the confines of the game farm perimeter fence, and beyond control of, or out of sight of, the game farm licensee or his/her agent.

12.6.1512 NEW SPECIES (1) To add a new game farm animal species that was not listed in the original application, and therefore not contemplated in design of the existing game farm fences and other facilities, the licensee must submit a new application listing the species desired.

12.6.1517 ESCAPED GAME FARM ANIMALS

Replace the 10-day stipulation for recapture of game farm animals and replace it with the term "reasonable", to allow FWP and DOL to make arrangements with the affected game farm operator that are commensurate with the degree of threat that the escaped animal(s) poses to wildlife populations or domestic livestock.....wording something like this:

(3) The licensee must recapture or destroy the animals within a reasonable time period, as determined by the department of fish, wildlife and parks or the department of livestock. Determination of an appropriate, "reasonable" time period shall be based on the degree of threat posed by escaped game farm animals to native wildlife populations and their habitats, and/or to domestic livestock.

(4) If the licensee is unable to recapture the animals within the time period set forth by FWP and DOL as reasonable, they may be destroyed.

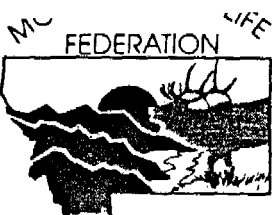
(6) The department of fish, wildlife and parks or department of livestock may inspect a recaptured animal before it is moved from the holding facility to the pasture from which it escaped.

(7) In instances where the escape of game farm animals has been unreported, the animals can be destroyed immediately

Additional topics that may need to be addressed through rule-making include: 1) "Fleshing out" criteria for denial of, or

stipulations to, a game farm license based on site-specific wildlife/habitat criteria; 2) Procedures for disposing of seized animals.

K: 338GUIDE



MONTANA WILDLIFE FEDERATION

P.O. Box 1175, Helena, MT 59624 406-449-7604

1990 Outstanding State Affiliate of the National Wildlife Federation

EXHIBIT 5
DATE 2/4/93
HB 338

February 4, 1993

I am Dave Majors, of Stevensville, here today on behalf of the Montana Wildlife Federation to urge your support of HB 338. During this past year I served as a member of the Governor's Ad Hoc Working Group on Game Farms, together with representatives of the game farm industry; the Department of Fish, Wildlife, and Parks; and the Department of Livestock. The bill presented for your consideration today was formulated by the committee members through a process of consensus.

HB 338 greatly strengthens the ability of the Department of Fish, Wildlife, and Parks to regulate the expanding game farm industry in Montana. This bill sets out specific criteria for the establishment or the expansion of a game farm. In section 4 of HB 338, restrictions are set forth regarding the applicant's prior convictions of fish and game laws within the United States and any felony convictions, unless his/her civil rights have been restored pursuant to law.

This bill will allow the Department of Fish, Wildlife, and Parks to deny or condition a game farm license, if necessary, to protect the public safety, as in the case where a game farm operator intends to harvest his/her game farm animals by shooting. The Department of Fish, Wildlife, and Parks may also deny or restrict a game farm license where there may be substantial loss or destruction of seasonal big game habitat, as traditional breeding, birthing, rearing, and wintering areas; the blockage or disruption of major seasonal migration routes; the unacceptable threat of the transmission of disease or parasites to native wildlife populations; and the unacceptable threat of escape of game farm animals and the establishment of feral populations, which would result in habitat damage, competition with native wildlife, or genetic pollution of our native wildlife species. Our upmost consideration must be the protection of Montana's free roaming native wildlife species.

HB 338 additionally sets out criteria for the revocation of a game farm license and penalties when applicable. This revocation procedure is to be implemented with an appropriate appeal process to protect the game farm operator. One of the key provisions of the penalties outlined in HB 338, is that a game farm operator may be held financially liable for the costs of restoration of any damage to native wildlife.

In conclusion, I would again urge your support for HB 338 as presented today.

Montana Audubon Legislative Fund

Testimony on HB 338
House Fish and Game Committee
February 4, 1993

My name is Janet Ellis and I am here today representing the 2,500 members of the Montana Audubon Legislative Fund. We support this bill and think that it is important to pass this legislation. We do want to see the following concerns addressed before the bill is passed:

1. The definition of a game farm appears on Page 2, lines 4 through 8. Although this is existing statute, we feel that the definition should be changed in the following way:

Page 2, line 6, following "keeping,"
Strike "and"
Insert "or"

2. There are several places where the term "big game" is used. In the definition section of this bill, however, the term defined is "game animal." The term "big game" should be replaced by "game animal" for consistency sake: ~~and~~ such locations of "big game" appear on

1. Page 6, line 18
2. Page 7, line 11
3. Page 16, line 3 and 6

3. Section 5 of the bill, Page 9, lines 1 - 3 set up fees for the licensing of game farms. These fees seem very low. We would like this program, at a minimum, to pay for itself.

4. On Page 7, line 18 and on Page 7, line 22, the term "unacceptable" is used. What does this mean and who has the burden of proof to decide what is acceptable and what is unacceptable?

5. On Page 9, lines 8 - 15, the "terms of a license" are set up. We are very uncomfortable with statement that: "The department shall renew the license upon payment of the renewal fee if the licensee has complied with all recording and reporting requirements." If there is a violation of any provisions under which the license was granted, the application should be able to be denied.

6. Page 9, lines 16 - 18, state that "A game farm license is transferable with the consent of the department." What does transferable mean? By location or by operator? This section needs to be clarified. The only time a permit should be transferable is at the same location.
7. For the penalty section on page 17, lines 14 - 20, it is not clear if the \$1,000 penalty is a per day or per violation penalty. This should be made clear.
8. One of the things that concerns us is that the public does not seem to have a say in the issuance of a license. Section 15, on page 20, allows for the license applicant to have a hearing. There does not seem to be any place for the public to be involved in this process, including any public notification of hearings. We would like there to be an opportunity for citizens to be able to participate hearings on any new licenses.

EXHIBIT 7
 DATE 2/4/93
 HB 338

HOUSE OF REPRESENTATIVES

WITNESS STATEMENT

PLEASE PRINT

NAME Joe Gutkoski BILL NO. 338ADDRESS 304 N. 18th Av. Bozeman MT DATE 2-4-93WHOM DO YOU REPRESENT? Mont. Wildlife FederationSUPPORT ☒ OPPOSE ☐ AMEND ☐COMMENTS: Escapement of captive animals from

game farms is the largest danger. To get away from
this danger I recommend a double fence be constructed
around all game farms. Escapement of captive animals
also threatens disease spread, genetic weakening of
native game species. Tuberculosis, brucellosis, and parasites
like menial worm can be spread into the 90,000 native
elk, free roaming in Montana. Regulation of the game
farm industry should be strong and forceful.

Exotic game species bringing old world diseases into Montana,
and interbreeding with native, free roaming game animals.

HOUSE OF REPRESENTATIVES

WITNESS STATEMENT

PLEASE PRINT

NAME Tony Schinner BILL NO. H.B. 338
ADDRESS Box 2 DATE 4 Feb '93
WHOM DO YOU REPRESENT? Skyline Sportsmen Assn.
SUPPORT ☒ OPPOSE ☐ AMEND ☐

COMMENTS: This bill goes a long way in
controlling the game ranching industry,
but it would be far better if the
bill were amended to totally phase
out game ranching.

If a person just looks at the
number of communicable diseases such
as T.B., brucellosis, scrapie or mad
cow disease and others - no precautions on transport
animals would be too great.

The latter can withstand in a virus-like
protein, immersion in formaldehyde or alcohol,
2 years of burial in soil etc. This disease is
found in ranches etc in the western states

This bill, H.B. 338 does a good job
of screening applicants, the plan of
operation etc. which could lead to the
denial of an application.

Please give a D-Pass to H.B. 338.

Tony Schinner

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Fish & Game COMMITTEE BILL NO. HB 338
DATE 2/4 SPONSOR(S) Ram

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Ronald BENNETT Falls 1801 16 th Ave S 59405	SELF	✓	✓
Les GABRIAN	MGBA		
Dave Major, Steamboat	MWR	✓	
Cork Mortensen	Dept. of Livestock	✓	
Elaine K. Alvestad	S.W.P.	✓	
Joe Gutkoski	Mt. Wildlife Fed	✓	
Tony Schouen	Skyline Sportsman	✓	
Ellen F. Schubarth	MGBA		
Bill Holdorf	Anaconda Sportsman	✓	
Jim Richard	MWR	✓	
Lea T. Host	RAVALLI COUNTY FISHER WILDLIFE ASSOC	✓	
JAN HAMER	Montana Bowhunters	✓	
Bob Lamp	PWP	✓	
Janet Ellis	MT Audubon	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

DATE _____ COMMITTEE _____ BILL NO. HB 338
SPONSOR(S) Beam

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
J.V. Bennett	MWF	✓	
Pat Graham	DFWP	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Discussion:

REP. DAILY asked the committee to look at section 17, pages 19 and 20. He declared that under current law, if the person who has hired an outfitter violates fish and game laws, the outfitter and the person are equally responsible. In the proposed language of HB 432, it does not remain this way. He believed that this should not be done. If a person is with a guide, then no violations should be occurring. He felt HB 432 does more than housekeeping.

REP. HIBBARD asked if the representative from the MOGA could address REP. DAILY's concern. Ms. Johnson said that line nine states "an outfitter, agent, or employee of such an outfitter who willfully fails to report a violation is liable." She explained it is a clarification of language and that an outfitter remains liable. REP. DAILY said that it still concerns him.

REP. MOLNAR believed outfitters should remain responsible for their clients' actions.

REP. HIBBARD commented that "an agent or employee" is being added, but the responsibility remains the same. REP. MOLNAR disagreed, saying the outfitter is responsible only if it is reported to a game warden.

REP. SWANSON pointed out that there is a continuation of the sentence which states, "and the outfitter, agent, or employee is not an active participant." She said that in her interpretation, if the outfitter was an active participant, even if he reports it, he is implicated. The assumption is that the outfitter is an active participant until he proves otherwise.

REP. MCCARTHY referred the committee to subsection two, page 20, of the bill.

CHAIRMAN FOSTER declared in his opinion there were no problems with the language.

REP. WAGNER said he agreed with CHAIRMAN FOSTER.

Vote: ROLL CALL VOTE HB 432 DO PASS AS AMENDED. Motion passed 13 to 3 with REPS. DAILY, MOLNAR, and RYAN voting no.

EXECUTIVE ACTION ON HB 338

Motion: REP. BOB REAM MOVED HB 338 DO PASS.

Discussion:

REP. REAM presented written testimony from Mr. Russ Kilpatrick, Great Bear Adventure (EXHIBIT 5).

Mr. Sternberg distributed copies of an amendment proposed by Mr.

Lon Mitchell, Department of Livestock (EXHIBIT 6). The amendment clarifies that the Department of Livestock is responsible for the individual marking of game farm animals, not the FWP Department.

Vote: AMENDMENT DO PASS. Motion passed unanimously.

Motion: REP. REAM MOVED HB 338 BE AMENDED.

Discussion:

REP. REAM stated the remaining amendments found in (EXHIBIT 6) were proposed by Ms. Janet Ellis, Montana Audubon, and have been approved by the FWP Department.

Mr. Sternberg explained that the second set of amendments makes grammatical changes and clarifies definitions.

Discussion:

CHAIRMAN FOSTER said that HB 338 is a compromise bill. He had no difficulty with the amendments; however, he wanted assurance that the amendments were acceptable to the parties involved. REP. REAM stated that they were acceptable to the Department.

Vote: SECOND SET OF AMENDMENTS DO PASS. Motion carried unanimously.

Motion: REP. REAM MOVED HB 338 DO PASS AS AMENDED.

Motion: REP. MOLNAR MOVED HB 338 BE AMENDED.

Discussion:

Mr. Sternberg distributed copies of amendments proposed by REP. MOLNAR (EXHIBIT 7). The amendments would increase the license fees and allow the Department to charge an additional one-time surcharge of \$500 for each license renewed during 1994.

REP. MOLNAR explained the increase in license fee would help fund the program at the FWP Department.

REP. ELLIOTT commented that not all game farms are large operations.

CHAIRMAN FOSTER suggested not proposing too many changes because the substance of the bill will lose its meaning. He declared that he strongly opposed any amendment which would change the substance and allow the compromise to fall apart.

REP. REAM remarked that the fees in HB 338 are already being doubled. In his opinion, a graduated fee system based on the size of game farm operation might be a viable option in the future.

Vote: THIRD SET OF AMENDMENTS DO PASS. Motion failed 14 to 2 with REPs. DAILY and MOLNAR voting yes.

Vote: HB 338 DO PASS AS AMENDED. Motion passed unanimously.

EXECUTIVE ACTION ON HB 313

Motion: REP. BARNHART MOVED HB 313 DO PASS.

REP. BARNHART commented that HB 313 provides a student fishing license.

Motion: REP. BARNHART MOVED HB 313 BE AMENDED.

Discussion:

Mr. Sternberg distributed copies of the proposed amendments (EXHIBIT 8). The amendments will create a new class of nonresident student fishing license, allow issuance of paddlefish tags to students holding the license, and provide a delayed effective date.

REP. BARNHART thought that creating a new class of license would be less complicated than providing a resident exception for a nonresident student.

REP. MCCARTHY asked if vo-techs and junior colleges would be included. REP. BARNHART explained the definition in the bill would include all college students. Mr. Sternberg remarked that the language in the proposed amendments is the same as the original bill. REP. MCCARTHY asserted she wanted all students covered. Mr. Sternberg's interpretation was that anyone who could provide proof of full-time enrollment at any Montana university or college would qualify for the license. REP. MCCARTHY felt that if the word "system" was used it would include all students and address her concern.

REP. DAILY asked Mr. Sternberg to phrase an amendment which would include all students. He said that any student who is attending "a unit of the Montana university system or a Montana college" would qualify.

Substitute Motion/Vote: REP. DAILY MOVED TO AMEND THE AMENDMENT. Motion carried unanimously.

REP. CLARK inquired about the fiscal note reflecting the amendment.

REP. REAM stated that the proposed fiscal note would be unchanged. Mr. Graham agreed with REP. REAM.

REP. CLARK asked Mr. Graham what the cost would be for implementing a new type of license. Mr. Graham said the exact cost is unknown, but it would involve printing costs.

HOUSE OF REPRESENTATIVES

FISH & GAME

COMMITTEE

ROLL CALL

DATE

2-16-93

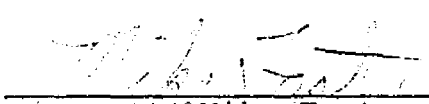
NAME	PRESENT	ABSENT	EXCUSED
VICE-CHAIRMAN CHASE HIBBEARD	✓		
VICE-CHAIRMAN BOB REAM	✓		
REP. BARNHART	✓		
REP. CLARK	✓		
REP. DAILY	✓		
REP. ELLIOT	✓		
REP. GRIMES	✓		
REP. HANSON	✓		
REP. KNOX	✓		
REP. MCCARTHY	✓		
REP. MOLNAR	✓		
REP. ORR	✓		
REP. RYAN	✓		
REP. SWANSON	✓		
REP. WAGNER	✓		
CHAIRMAN MIKE FOSTER	✓		

HOUSE STANDING COMMITTEE REPORT

February 17, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Fish and Game report that
House Bill 338 (first reading copy -- white) do pass as amended

Signed: 
Mike Foster, Chair

And, that such amendments read:

1. Page 2, line 6.
Strike: "and"
Insert: "or"
2. Page 6, line 18.
Strike: "big"
Following: "game"
Insert: "animal"
3. Page 7, line 11.
Strike: "big"
Following: "game"
Insert: "animal"
4. Page 9, line 16.
Following: "license"
Insert: "for a specific facility"
5. Page 10, lines 15 and 16.
Following: "livestock" on line 15
Strike: "and the department"
6. Page 16, lines 3 and 6.
Strike: "big"
Following: "game"
Insert: "animal"

Committee Vote:
Yes 16, No 0.

391424SC.Hss

FAX
IT!**FAX**
IT!

insty-prints

EXHIBIT 5DATE 2/16/93HB 338

131 Main Street
Kalispell, Montana 59901
(406) 752-8812 FAX (406) 752-8814

Facsimile Cover Sheet

To: Legislature Fax #: 444-4105

Attention: Flat. Head Cnty. Rep. & Sen.

From: Russ Kilpatrick Great Bear
Adventure

Date: 2/16/93

of pages to follow 13

Comments: Special ATT. Mary Riitano

F.W.P. Committee (In care of names)

FAX
IT!**FAX**
IT!

GREAT BEAR ADVENTURE

Box 212

Kila, MT 59920

HB. # 338

DEAR REP. REAM,

Feb. 12, 1993

IN RESPONSE TO OUR CONVERSATION, I'M LISTING MY
OBJECTIONS AND REASONS WHY THIS TYPE OF LEGISLATION
IS UNFAIR IN THAT IT GIVES UNWARRANTED POWERS TO
ELW & P. THEIR EXPERTISE IN THESE AREAS IS AT BEST
MINIMAL, MAYBE A LAIDMAN'S POINT OF VIEW, BUT CERTAINLY
NOT PROFESSIONAL BY ANY STRETCH. MATTERS CONCERNING
OFFENDERS OF CURRENT LAWS SEEMS SUFFICIENT SINCE
THE PERPETRATORS HAVE BEEN RECOGNIZED WITHIN THE ELK
FARMING INDUSTRY. IMPOSING THIS NEW LEGISLATION UPON
GREAT BEAR ADVENTURE CANNOT BE TOLERATED. I FEEL
FOR YOUR DILEMMA, BUT FOR UNIQUE BUSINESSES LIKE
OURS, THESE FOLLOWING CONTROVERSIES ARE CIVILLY AND
CONSTITUTIONALLY DISCRIMINATORY.

HOUSE BILL # 338

PARAGRAPH 1 (PAGE 1, LINE 6): DOES THIS MEAN THAT A
LICENSE IS NO LONGER NEEDED OR NO MORE SHOOTING
RANCHES? THESE ANIMALS ARE PRIVATELY OWNED AND
SHOOTING OR ANY OTHER USE SHOULD BE DETERMINED BY
THE OWNER. STANDARD HUNTING AND LOCAL LAWS CONCERNING
GUN DISCHARGE ARE ALREADY SUFFICIENT.

SECTION 1 ITEM 5 (PAGE 2, LINES 12-13): DOES THIS REFER
TO INDIGENOUS OR ANY CLOVEN-HOOVED UNGULATE?

TIPALAS ARE NOT INDIGENOUS. ARE THEY THEN CONSIDERED
GAME? I THINK THAT "ANY OTHER" NEEDS TO BE SPECIFIC.
AGAIN, THESE ARE BROAD AND VAGUE TERMS. MAYBE ENK
BANCHERS ARE IN AGREEMENT BECAUSE THEY ALREADY SEE
THE SAME LOOPS. AGAIN THE PROBLEM IS SPECIFIC, YET THIS
BILL IS GENERAL AND UNFAIR TO THE OTHER SPECIES. TYPICAL
STEREOTYPING.

SECTION 3 ITEM 1(d) (PAGE 3, LINES 21-23): THIS SHOULD
BE AMENDED TO ELIMINATE THESE THREE LINES BEGINNING
WITH "TOGETHER WITH THE NATURE..." THIS IS PRIVATE PROPERTY
THE LEGAL DESCRIPTION IS ENOUGH. I DO NOT BELIEVE ENK P
IS IN THE LAND BROKER BUSINESS, AND THE INFORMATION ASKED
FOR IS IN VIOLATION OF PRIVACY. THIS IS MORE MISUSED POWER
TOTALLY UNWARRANTED.

SECTION 3, ITEM 3 (1) (PAGE 4, LINES 8-10): AGAIN, THIS
IS NONE OF ENK P'S BUSINESS. THE AGENT OR PRESIDENT
OF THE CORPORATION IS ENOUGH. BE SPECIFIC, WHAT ARE THEY
LOOKING FOR? OMIT LINES 8-12. THIS BILL IS BEGINNING TO
SOUND LIKE INTERPOL.

SECTION 3, ITEM 3 (1) (PAGE 4, LINES 11-12): TOTALLY OMIT

THIS IS COMICAL. THIS SUGGESTS THAT THE CORPORATION SUPPLY
FW & P WITH ITS OWN CREDENTIALS OF RESPONSIBILITY. DOESN'T
FW & P KNOW THAT RESPONSIBLE PEOPLE HAVE CORPORATIONS?
FW & P HAS NO AUTHORITY TO PROBE CORPORATE INFORMATION.
SPECIAL AGENTS HAVE AUTHORITY TO PROBE IF AN INTERACTION
OCCURS. INVASION OF PRIVACY AND CORPORATE DISCRIMINATION.

SECTION 3, ITEM 2 (PAGE 4, LINES 13-25, PAGE 5, LINES 1-17):

I'VE PERSONALLY EXPERIENCED FW & P'S MANIPULATION OF
THIS TYPE OF LEGISLATION. THIS GIVES FW & P MORE UNWARRANTED
POWER. THE LAW HAS TO BE SPECIFIC IN TERMS SO IT CAN BE
APPLIED EQUALLY AND FAIRLY THROUGHOUT THE INDUSTRY.

I'M CURRENTLY AT WAR WITH THIS ISSUE IN REGION 1. I'M
BEING TOLD THAT AN ENVIRONMENTAL IMPACT STUDY MAY HAVE
TO BE DONE ON A BROWN BEAR'S IMPACT ON THE ENVIRONMENT
(READ THE ENCLOSED LETTER). HE IS THE ENVIRONMENT! I'M
ALSO ENCLOSING AN EXAMPLE OF A FW & P ENVIRONMENTAL
ASSESSMENT, AN EMBARRASSING CONGLOMERATION OF
UNWARRANTED ACCUSATIONS BY FW & P EXPERTS, AND TWO
YEARS LATER, I'M TOLD THIS F.A. MAY NEED TO BE SUPPLE-
MENTED (SEE LETTER). I'VE PERSONALLY BEEN HARASSED,
DISCRIMINATED AGAINST, MANIPULATED, AND MY LIVELIHOOD CAN
AND HAS BEEN HELD IN THE BALANCES BY FW & P EMPLOYEES.

SECTION 4, ITEM 1 (b-c) (PAGE 5, LINES 24-25, PAGE 6, LINES 1-

OMIT. IF BY CIRCUMSTANCE 5 YEARS AGO, I POACHED A
DEER TO FEED MY FAMILY DURING BAD TIMES, WAS CAUGHT AND
FINED, I COULD NOT HAVE A GAME FARM LICENSE? THIS IS
ABSURD. FW & P CANNOT HAVE THIS KIND OF AUTHORITY.

SECTION 4, ITEM 2 (a) (PAGE 6, LINES 13-18) THE FENCING

DILEMMA AGAIN. THE AUTHORITY TO DETERMINE PROPER
FENCING TO KEEP OUR ANIMALS IN CAN ONLY BE DETERMINED
BY AN EXPERIENCED OWNER. FW & P ONLY DEALS WITH "WILD"
FREE-ROAMING ANIMALS. OUR ANIMALS ARE CONDITIONED,
SOMETHING FW & P IS UNFAMILIAR WITH. IS THERE A DIFFERENCE
OR NOT BETWEEN CONTAINING WILD DOGS OR TRAINED OR
CONDITIONED ONES? Species Specifics! Please

SECTION 4, ITEM 2 (c) (PAGE 6, LINES 21-24) AGAIN, BROAD

BASED POWER IS GIVEN TO FW & P TO DETERMINE THROUGH THE
APPLICANT'S "DEMONSTRATION OF NECESSARY SKILLS." ISN'T THIS
VAGUE TO THE POINT THAT THE INEXPERIENCE OF FW & P EMPLOYEES
AS CURATORS OR ANIMAL TRAINERS CAN CAUSE MISJUDGMENT
OF NECESSARY SKILLS? I'VE ALREADY EXPERIENCED THIS CRISIS.
I'VE ATTACHED NEWSPAPER CLIPPINGS OF JURISDICTIONAL LIMBO
BETWEEN DEPARTMENTS. ONE MUST REALIZE THAT THE BURDEN
OF POWER AND AUTHORITY, WHEN UNQUALIFIED, CAN RESULT IN
INDECISION, CONFUSION AND THE APPLICANT'S DESTRUCTION.

THESE BROAD-BASED POWERS AND VAGUE DESCRIPTIONS CREATE THE VERY BASE FOR MISUSED POWER.

OPINION WHEN WE REALIZE THAT CURRENT LAWS ARE INSUFFICIENT, WILL DO WE CONTINUALLY TRY TO PATCH THEM WITH REVISIONS? YOU CAN ONLY PATCH A TUBE SO MUCH, THEN IT'S TIME FOR A NEW ONE. THE GAMING LAWS, 200 AND GAME FARM REGULATIONS NEED TO BE COMPLETELY REWRITTEN. THREE YEARS AGO WHEN I FIRST BEGAN COMMUNICATION WITH VARIOUS DEPARTMENTS CONCERNING CURRENT LAWS, BOB BIRD, AL ELZER, GREG BARNES AND BILL BOHARSKI SUGGESTED GETTING TOGETHER WITH ME TO WORK UP BILLS CONCERNING THESE LAWS. OUR LAWS, INCLUDING REVISIONS, NEED TO BE ENJOINED AS HISTORY, AND PRECEDENT AND TREAT-SETTING LAWS ESTABLISHED WHICH ADDRESS THE VARIETY OF FUNCTIONS OF GAME FARMS AND SPECIES WITH INPUT FROM THE PROFESSIONAL OPERATORS TO REFLECT THE DIFFERENT CONCERNS AND REQUIREMENTS. LEGISLATORS MUST CONSIDER THE MOTIVES OF PARTICIPANTS, DISCOVER THROUGH PERSONAL COMMUNICATION WHETHER THEY ARE MONETARY OR REHABILITATIVE AND LIFE-SAVING RESEARCH ORIENTED. MONETARY DRIVE SEEMS TO PRODUCE THE MOST INTERACTIONS. TIGHT-KNIT RELATIONS WITH CONCERNED STATE AGENCIES IS A MUST, AND

WITH THE LATTER MOTIVES. AN EXAMPLE IS GREAT BEAR ADVENTURE'S CONTINUING CONTACTING OF ALL CONCERNED AGENCIES WITH USEFUL AND UPDATED WORLD WIDE INFORMATION ON DNA, DISEASES, CONDITIONING, ETC.

SECTION 4, ITEM 3 (LINES 4-5) THIS SHOULD BE AMENDED TO READ "PROVEN HAZARDS" AND "PROVEN IMPACTS", NOT LEFT OPEN TO FWYF EMPLOYEE'S PERSONAL DETERMINATIONS.

SECTION 4, ITEM 3 (a-d) (PAGE 7, LINES 10-25)

(a) THIS SHOULD BE OMITTED BECAUSE IT IS DISCRIMINATORY AGAINST GAME FARMS. THIS COULD PROHIBIT THE ESTABLISHMENT OF A GAME FARM, BUT THERE IS NO PROVISION TO PREVENT A HOLIDAY INN, CAMPGROUND, McDONALD'S OR A SHEEP OR CATTLE OPERATION ON THE VERY SAME PROPERTY. IS FWYF IN A POSITION TO PURCHASE ALL PROPERTY THAT FITS THIS DESCRIPTION TO PREVENT ANY DEVELOPMENT OF ANY KIND? THIS IS ALSO HYPOCRITICAL WHEN VIEWED IN THE LIGHT OF THE AMOUNT OF HABITAT DESTROYED BY OPEN-RANGE LIVESTOCK.

(b) THIS SHOULD BE OMITTED

(d) WHO DETERMINES "UNACCEPTABLE THREAT"? IN MY EXPERIENCE FWYF'S DETERMINATION OF "UNACCEPTABLE THREATS" WERE TOTALLY UNWARRANTED AS IS OBVIOUS IN THEIR EA AND SUPPLEMENTAL ATTACHMENTS TO MY TRX PERMITS. I REFER

AGAIN TO COMMENTS RE SECTION 4, ITEM 2 (c). IN MY CASE, THE EXPERIENCE OF THOSE WHO HAVE HAD BEARS RAISED IN CAPTIVITY WAS IGNORED AND STIPULATIONS WERE BASED ON SUPPOSITIONS OF CONTAINING AN ADULT TAKEN FROM THE WILD.

I MUST STRESS THAT I'M CURRENTLY IN POLICY LIMBO PENDING POSSIBLE LAWSUITS TO CLARIFY ALREADY EXISTING VAGUENESS IN THE LAWS. MORE OR INCREASED BROAD-BASED POWERS FOR FW & P IN FIELDS IN WHICH THEY HAVE LITTLE EXPERTISE IS UNACCEPTABLE.

I CLOSE STATE THAT FURTHER EXAMINATION OF THIS IS UNNECESSARY BECAUSE NB #338 IS UNACCEPTABLE AS WRITTEN.

SINCERELY,

Russell A. Kilpatrick

PRES. *Must Bear Adventure Inc.*
QUESTIONS: 755-3502

cc: Sen. Forrester, Rep. Boharski, Rep. Fisher, Rep. Dowell, Rep. Herron, Rep. Waszenri, Rep. Wagner, Sen. Brown, Sen. J. Kennedy Jr, Sen. Harp. cc: ATT: Mary Ruitano Rm. 312-3A

Exhibit 5
2-16-93
HB-338

MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS
1420 East Sixth Avenue
Helena, Montana 59620
(406) 444-2449

ENVIRONMENTAL ASSESSMENT

Division/Bureau Wildlife/Enforcement

Project or Application Great Bear Adventure Park

Description of Project Russell and Peggy Kilpatrick, Box 212, Kila, Montana, 59920, have made application for a Roadside Zoo and Menagerie Permit to operate a drive-through bear park near Coram, Montana. The Kilpatricks have fenced an 8-acre parcel of land in Tract 2 of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21, T31N R19W, MPM, (See Exhibit 1), and will place three to six black bears in the fenced area initially. These bears will be available for viewing on a fee basis by the public in a vehicle drive-through natural-appearing setting.

The park contains a coniferous vegetation community dominated by lodgepole pine (Pinus contorta) and enclosed by a single perimeter fence consisting of a 6-foot high steel page-wire mesh below three strands of barbed wire, to make an 8-foot high perimeter fence. The perimeter fence also contains electrified wired near the bottom on both the inside and outside, (See Exhibit 3). The bears will utilize natural foods found in the coniferous vegetation community, supplemented by selected prepared foods, grains and minerals.

Description of Benefits and Purposes of Proposed Action: The drive-through park is intended to provide an opportunity for the public to view bears in a natural setting. This natural-appearing setting could allow people to learn about bear behavior, feeding habits, resting patterns and social interactions. The location is near Glacier National Park and optimizes opportunities to attract travelers and tourists during the late spring/summer/early fall seasons.

Affected Agencies: The nature of the proposal will be of concern to several agencies or entities from the federal level to the local level. These concerns range from regulatory to environmental to social. A listing of agencies and entities have jurisdictional or environmental review responsibility in the proposed action includes, but may not be limited to:

- U.S. Forest Service, Flathead National Forest
- U.S. Park Service, Glacier National Park
- U.S. Fish and Wildlife Service, Grizzly Bear Recovery Coordinator
- State of Montana, Department of Highways
- State of Montana, Department of Fish, Wildlife and Parks
- Flathead County Regional Development Office
- Chamber of Commerce, Columbia Falls
- State of Montana, Environmental Quality Council, Helena

Evaluation of Impacts on the Physical Environment:

Location: The site of the park is within habitat classified as Management Situation 1 for grizzly bear recovery and management. These areas are important to the survival of grizzly bear in a natural, free-ranging condition. The probability is great that major activities and programs may have direct and/or indirect relationships to the conservation and recovery of grizzly bear. The 8-acre parcel currently fenced, and plans to fence an additional 14 acres, is not a major activity but will remove that land base from seasonal use potential by grizzly bear. Activities like the Great Bear Adventure Park do contribute to the cumulative affects of other minor activities and can become a long-term impact to the recovery of a segment of the grizzly bear population.

The site of the park is not in compliance with a Master Plan developed by the Flathead County Regional Development Office for planning and development of rural areas of the county, but the site has not been zoned in accordance with the Master Plan. The park is near other commercial development along U.S. Highway 2 and near the town of Coram, Montana, both of which contribute toward a cluster-development concept that tends to minimize a concern for impacts to a reported grizzly bear travelway between Glacier National Park and the Great Bear Wilderness.

The site of the park is within habitats currently available to a broad variety of terrestrial wildlife uses. The fenced park will be dedicated to a single species use. Black bear that have been introduced into the fenced park will become an attractant to individual wild bears, both black and grizzly, that use the park area on a seasonal basis. Wild bears have an acute sense of smell and find much of their food by smelling. Bears have the capability of smelling carcasses from several miles away. Male bears find many of their mates by smelling and following scent trails.

Size: The park contains about 8 acres, of which a portion is used as a permanent road bed. Six black bear are to be placed in the fenced park and are to utilize the natural foods found on the site. The park may be expanded to 22 acres in the future. Based upon published literature for black bear home range size in habitats similar to the park, 8 acres will be inadequate to satisfy the seasonal needs of an average female black bear. The addition of five other bears to the confined park will result in modifications to the habitat that will no longer represent a natural-appearing setting. Supplemental feeding of the confined bears will become the primary source of food.

Evaluation of Impacts on the Human Population:

Location: The site is accessed from U.S. Highway 2 about 1½ miles north of Coram, Montana. Based upon projected use levels, traffic volumes and safety conditions will be within designed standards utilized by the Montana Department of Highways for this portion of Highway 2.

Educational Opportunity: Public comment on the educational value of the park was divided but several people suggested that a facility like the Great Bear Adventure Park could be a valuable educational opportunity for the public. The park concept is consistent with emerging interests in watchable wildlife programs and opportunities. Local travel promotion groups indicate that there are needs for developments like the park that have potential to extend the recreational opportunities and season in this valley.

There are concerns that the Great Bear Adventure Park may convey the wrong perception of black bears in this natural-appearing setting and that segments of the public may develop erroneous expectations of bear-human interactions during encounters in truly natural settings. The size of the park, proposed stocking density and availability of natural foods does indicate that supplemental feeding will probably become the primary food source for the bears and that may be an incorrect perception to portray of bears in a natural setting. The appearance of the vegetation within the fenced park will be modified by the concentrated bear use and could mislead the public about bear use of natural environments.

Bears within the park will become more tolerant of people and may display learned behavior responses to people that are not compatible with people and bears in natural environments. The Great Bear Adventure Park will establish operational procedures that prohibit feeding of bears by visitors. There is a concern that people touring the park will feed the semi-wild bears and that human behavior may be transferred to feeding of wild bears in nearby Glacier National Park. Glacier National Park, and other national parks supporting wild bear populations, have established and actively enforce by policy, brochures, and signs a program discouraging feeding of wild animals by visiting tourists and motorists. Feeding of wild animals in Glacier National Park is a continuing concern in the Park's management program.

Perimeter Fencing: The perimeter fencing design employed by the Great Bear Adventure Park is in variance with currently used standards for animal containment under the Roadside Menagerie and Zoo or Game Farm regulations of Montana. The escapement of captive animals as well as the restraint of entry by wild animals is a concern in the fencing design at the park. The issues relative to this concern involve the integrity of gene pools in wild populations and safety of the public around the electric fence.

Bears brought into the Great Bear Adventure Park are not native to this area and could possess genetic characteristics that would not be desirable in wild bear populations if the captive bears were to escape. Conversely, if wild bears were to gain entry into the park in search of a mate during the breeding season, exchange of genetic characteristics into the wild could also occur. The occurrence of captive bears in the park may be an attractant to wild bears and their presence in the surrounding area could be viewed as a safety concern by segments of the public.

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The perimeter fence is marked with warning signs at irregular intervals. Great Bear Adventure Park visitors will be restricted to their vehicles while touring the park and should not come in contact with the electric fence and receive a shock from the fence. The electric fence is pulse-charged by a relatively high voltage with a low amperage and should not be life threatening to people coming in contact with the fence although the experience will be quite unforgettable.

The concern for design of the perimeter fence in relation to escapement or restraint of bears and to public safety was reviewed by a grizzly bear specialist with the Department of Fish, Wildlife and Parks who has considerable experience in the use of electric fences to restrain bears from livestock and beehive food sources. The specialist's report is attached as Exhibit 6 and provides recommendations to improve the effectiveness of the perimeter fence.

Description and Analysis of Reasonable Alternatives:

1. Great Bear Adventure Park could utilize proven fencing techniques or modify the existing fence to lessen concerns for escapement of confined bears or for restraint of wild bears trying to enter the park.
2. Great Bear Adventure Park could use fewer bears or enlarge the park to improve the public perception of bears and their use of natural-appearing settings.

Mitigation, Stipulations and Other Controls:

1. Black bear only.
2. All bears sterilized.
3. All bears tattooed.
4. Food storage - in odor-proof containers as per U.S.D.A., A.P.H.I.S. rules.
5. Veterinary care program - need to be more specific in vaccinations that will be administered.
6. No road-killed ungulates in feeding program.
7. All provisions of roadside zoo and menagerie regulations apply except caging requirements (12.6.1302).
8. Fencing requirements:
 - backup fence energizer, 12-volt system, deep cycle battery.
 - warning signs adequate to protect public if electrical fence system approached from outside of park.
9. Fencing recommendations:
 - enhance existing fence as per recommendations, or
 - develop outside perimeter fence and use trained dogs to minimize or prevent bear escapement or entry and human entry or injury.
10. Permit review - annually with revocation rights.
11. Escaped bears - owner liable for damage and/or expenses incurred in capturing escaped bears.

**Montana Department
of
Fish, Wildlife & Parks**



Region One
490 North Meridian Rd.
Kalispell, MT 59901
(406) 752-3501
FAX: 406-257-0349
Ref:DV122.93
November 10, 1992

Mr. Russell Kilpatrick
Box #212
Kila, MT 59920

Dear Russ:

You have recently made request through the Region One Office of the Department of Fish, Wildlife and Parks for permission to import and possess at the Great Bear Adventure Park a coastal brown bear from Alaska. Under the stipulations of your existing zoo and Menagerie Permit with the Department, you are limited to black bear only. If you now wish to bring in bears other than the black bear (Ursus americanus), you will have to apply for a new permit.

In considering a new permit, the Department would supplement the Environmental Assessment completed for the original Zoo and Menagerie Permit to include considerations for a coastal brown bear and complete another public involvement procedure. From a practical standpoint, we wouldn't have time to do this until after the new year.

The coastal brown bear is a geographical subspecies of the grizzly/brown bear group Ursus arctos. As such, the importation of a coastal Brown Bear would be subject to Federal as well as State regulations. The supplemental Environmental Assessment would make this disclosure and would bring the U.S. Fish and Wildlife into the application review process. It is quite likely that concerns related to possible escapement, disease transmission and gene pool contamination in native grizzly bear populations would necessitate preparation of an environmental impact statement. This effort would take several months to complete and could involve a financial commitment on your part.

We will await your decision and new permit application before proceeding further on permitting to include a coastal Brown Bear at the Great Bear Adventure Park.

Sincerely,

Dan Vincent
Regional Supervisor

JC/dc

Exhibit 5
3-10-93
H13-338

Bear park remains open despite rabies diagnosis

By The Daily Inter Lake and The Associated Press

A black bear that died at the new Great Bear Adventure Park at Coram was infected with rabies, state veterinarian Donald Ferlicka confirmed Friday, but the park remained open Saturday.

The park's status is in a sort of jurisdictional limbo, with state and county officials differing on whether there is authority to close the facility.

Meanwhile, the owners of the park say they are considering legal action, and question whether the bear died of rabies.

The rabies diagnosis is 98-percent sure, the state veterinarian said.

Montana Department of Fish, Wildlife and Parks officials met

in Kalispell Friday to determine whether the department has the power to close the park. The drive-through park operates under a department-granted zoo permit.

The Flathead City-County Health Department has no jurisdiction, said local health director Dennis Klukan.

But on Saturday, Dan Vincent, of the local Fish, Wildlife, and Parks department, said that Klukan would make the final decision.

Peggy Kilpatrick, who owns and operates the park with her husband, Russell, said that various agencies Friday "were more or less saying they want it shut down."

But no one took that step and See BEAR PARK on Page A2

July 21, 1991

Bear park

Continued from Page A1

"a lot of people came through today and had a lot questions," Kilpatrick said of her customers.

She said she is concerned that "it is being reported the bear died of rabies and we don't know that. The autopsy is not complete."

For that reason, Kilpatrick said she wants to limit her comments, but did say that the couple is looking at possible legal action in the matter.

The remaining four bears appear to be healthy but will be quarantined and kept under observation for as long as six months, the longest known period for rabies to develop, Ferlicka said. There is no rabies vaccine for bears.

Rabies in bears is "extremely rare," Ferlicka said. Bears, especially grizzlies, are regularly tested after maulings, and this is the first time in Montana, to his knowledge, the results have been positive.

The 2-year-old male bear, one of five at the Coram park, died Monday. Russell Kilpatrick sus-

bear autopsied.

Ferlicka credited Greg Markel, DVM, veterinarian at LaSalle Veterinary Clinic, with making the diagnosis possible.

Half the brain was sent to the Montana State University animal lab in Bozeman, where the diagnosis was made. The brain tissue is being forwarded to the Centers for Disease Control in Atlanta for virus typing.

Two of the bears came from game farms in South Dakota, and the others, including the one that died, were bought at a game farm in Red Lodge in Carbon County.

"We've determined this exposure (to rabies) may have occurred in Carbon County," Ferlicka said. Both Carbon and Flathead counties are under quarantine because of rabid skunks.

Russell Kilpatrick believed the bear's death was caused by visitors from California who threw something out of their car for the bear to eat last weekend.

Ferlicka said the Bozeman lab tests did not rule out the possibility of drugs, and the wild-animal disease lab at Colorado State University is including that possibility in tests it is conducting on the

other half of the bear's brain. Rabies is outside the direct authority of the local board, Klukan said. If a potential public health emergency did develop, the board would seek a court injunction.

The health department made its rabies vaccine available to the people who took part in the bear autopsy. Rabies is spread by saliva entering wounds.

Marilyn White, animal director, said there have been further reports of rabies other than two skunk deaths in the Haskill Basin near Whitefoot.

Amendments to House Bill No. 338
White Reading Copy

Requested by Janet Ellis, Montana Audubon
For the Committee on Fish & Game

Prepared by Doug Sternberg, Council Staff
February 9, 1993

1. Page 2, line 6.

Strike: "and"

Insert: "or"

2. Page 6, line 18.

Strike: "big"

Following: "game"

Insert: "animal"

3. Page 7, line 11.

Strike: "big"

Following: "game"

Insert: "animal"

4. Page 9, line 16.

Following: "license"

Insert: "for a specific facility"

5. Page 10, lines 15 and 16.

Following: "livestock" on line 15

Strike: "and the department"

6. Page 16, lines 3 and 6.

Strike: "big"

Following: "game"

Insert: "animal"

do not pass

Amendments to House Bill No. 338
White Reading Copy

EXHIBIT 7
DATE 2/16/93
HB 338

Requested by Representative Molnar
For the Committee on Fish & Game

Prepared by Doug Sternberg, Council Staff
February 8, 1993

1. Page 9, line 2.

Strike: "\$200"

Insert: "\$500"

2. Page 9, line 3.

Strike: "\$50"

Insert: "\$250"

3. Page 9, line 3.

Following: "."

Insert: "The department may charge an additional one-time
surcharge of \$500 for each license renewed during fiscal
year 1994."

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON FISH & GAME

Call to Order: By Senator Bob Pipinich, Chair, on March 11, 1993, at 3:00 p.m.

ROLL CALL

Members Present:

Sen. Bob Pipinich, Chair (D)
Sen. Gary Forrester, Vice Chair (D)
Sen. Tom Beck (R)
Sen. Don Bianchi (D)
Sen. John Brenden (R)
Sen. Chris Christiaens (D)
Sen. Gerry Devlin (R)
Sen. Judy Jacobson (D)
Sen. Terry Klampe (D)
Sen. Kenneth Mesaros (R)

Members Excused: Sen. Bruce Crippen (R)

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Council
Kathy Collins, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 338, HB 341
Executive Action: None.

HEARING ON HB 338

Opening Statement by Sponsor:

Representative Bob Ream, House District 54, stated at the end of the last legislative session, Governor Stephens convened an ad hoc committee to study the game farm issue. The committee consisted of representatives of the game farm industry, the Montana Wildlife Federation (MWF), the Department of Fish, Wildlife & Parks (DFWP) and the Department of Livestock. The result of that committee was HB 338. Representative Ream stated HB 338 would provide the tools necessary for the DFWP and the Department of Livestock to carry out the task of regulating the

game farm industry. Representative Ream stated Heidi Youmans, DFWP, who did research on the subject of game farms, was present and would be available for questions.

Proponents' Testimony:

Bob Lane, DFWP, distributed copies of information on game farms (Exhibit #1) and spoke from prepared testimony in support of HB 338 (Exhibit #2).

Cork Mortensen, Executive Secretary, Board of Livestock, spoke from prepared testimony in support of HB 338 (Exhibit #3).

Les Graham, representing the Montana Game Breeders Association (MGBA), stated he agreed with what previous proponents had said and HB 338 fits in with SB 57, which was introduced by Senator Swift. Mr. Graham stated MGBA is in support of HB 338.

Janet Ellis, representing the Montana Audubon Legislative Fund, stated she supported HB 338, but she did have some concerns. One concern is about page 9, Section 5, lines 1-4. Ms. Ellis stated this part of HB 338 doubles the fees the game farms are charged. Ms. Ellis stated the industry is not carrying its weight as far as what it costs to regulate it. Ms. Ellis said she wanted to go on record as stating the fees are not adequate and should be raised. Ms. Ellis stated the second concern was about page 20, Section 15, which deals with the right to an administrative hearing on the denial of a game farm license. Ms. Ellis stated HB 338 does not indicate what the public's role is in the public hearing process. Ms. Ellis said when this question was raised in the House, she was told that the public hearing process would come under the Montana Environmental Policy Act (MEPA) compliance by the DFWP. Ms. Ellis stated under MEPA, if an environmental assessment is done, the public does not necessarily get the opportunity for a hearing.

Stan Bradshaw, representing the Montana Bowhunters Association, urged the Committee's support of HB 338.

J.V. Bennett, representing MWF, stated he supported HB 338 and submitted written testimony (Exhibit #4).

Opponents' Testimony:

Ron Bennett, representing himself, spoke from prepared testimony in opposition to HB 338.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Klampe, referring to the fiscal note, asked Representative Ream why the fees were not being raised commensurate with the costs. Senator Klampe asked why the hunters should have to pay for a free-enterprise game farm. Representative Ream directed the question to Bob Lane, DFWP. Mr. Lane stated the ad hoc committee did address the issue of fees, but they did not have enough time to present, to this legislature, an increase in fees. Mr. Lane stated the committee thought there should be a sliding scale to make the fees equitable to various sized game farms, but they did not have the data necessary to make a decision everyone would be comfortable with.

Senator Klampe asked why the extra cost will be carried by the hunters, taxpayers, etc. Mr. Lane stated when this legislation was drafted, the committee did not have the fiscal note before them, nor did they have the background information. Mr. Lane said the committee's greatest concern was not about the dollar amount, but about the potential damage that could be done if game farms were not properly regulated. Mr. Lane stated the area of fees is a valid concern and the committee intends to address this area within the next few years.

Senator Pipinich asked Bob Lane if the \$45,353 for the fiscal year 1994 would come out of DFWP. Mr. Lane said, "yes." Senator Pipinich stated the game farmers should pay that amount. Mr. Lane stated this would be a judgement by the Legislature, but based on the compromise within the ad hoc committee, he could not make representation of what would be appropriate.

Senator Mesaros asked Bob Lane why harvest by hunting has been deleted from HB 338. Mr. Lane stated there had been a requirement for shooting tags, but the way the industry is regulated now, the critical factor is the inspection by the Department of Livestock whenever an animal is killed. Mr. Lane stated there was no longer a purpose in requiring shooting tags. Senator Mesaros asked Mr. Lane if it is legal to shoot an elk on a game farm. Mr. Lane stated game farm animals are private property of the game farm rancher, and they can shoot the animals anytime they so desire.

Senator Christiaens asked Bob Lane if the reporting, which is required of the game farm ranchers, is too extensive. Mr. Lane stated the reason the reporting times were changed was because there would be better control over the industry if the reports were submitted three times a year as opposed to once. Senator Christiaens asked Mr. Lane what the reports contain. Mr. Lane stated the reports include information about the number of each species purchased and from whom purchased, the number of game farm animals transferred or sold and the date of transfer or sale, the name and address of the person the animal is sold or transferred to, and the identification of each animal purchased,

transferred or sold. Mr. Lane stated it is critical to trace what happens to game farm animals to effectively regulate the industry and make sure the ranchers are not stealing animals from the wild.

Senator Beck asked Mr. Lane how many game farms there are in Montana. Mr. Lane stated there are presently 102 game farms in Montana. Senator Beck asked Mr. Lane about how many "bad" game farm operators there are in Montana. Mr. Lane stated there are a number of ongoing investigations being conducted by the DFWP, and there is concern over about 10% of the operators in the state. Senator Beck asked about the average number of animals in a game farms. Heidi Youmans stated an average is not really meaningful in this case. There are quite a few people who have one to five animals, and there are others who may have four to five hundred. Senator Beck stated doubling the fees would be difficult for the rancher who owns four or five animals.

Senator Beck asked Mr. Lane if an environmental impact statement (EIS) would be required for all new applicants. Mr. Lane stated an EIS would not be required for all applicants. Mr. Lane said an EIS is done only when a particular game farm would make an impact on the environment. Mr. Lane stated normally an environmental assessment is used as a checklist to make sure there are no problems. The assessment could range from a very simple one to a more detailed analysis which would tell the Department whether or not an EIS is needed.

Senator Beck asked Mr. Lane what the difference is between a minor and a major game farm. Mr. Lane stated a minor game farm could be a farm in an area in which there are not native species of the same type as those on the game farm in an area in which there would not be security problems. A major game farm could be one in which the farm was large or there exists a population of native species the same as that which is on the game farm.

Senator Beck stated there are no specifications in HB 338 as to how a game farm will be classified and when an EIS will be done. Mr. Lane stated those specifications are already in statute.

Senator Bianchi asked Mr. Lane who pays for the EIS. Mr. Lane stated the applicant pays for the EIS.

Senator Bianchi asked Ron Bennett if he didn't think better regulation of game farms was the next best thing to a moratorium on game farms. Mr. Bennett stated the state needs to start somewhere, but he did not think HB 338 was the place to start.

Senator Klampe commented to Mr. Lane that it appears from the fiscal note that the applicant would not pay for the EIS. Mr. Lane stated with the environmental analysis, the only thing the applicant can be charged for is the EIS. Mr. Lane stated all the applications will not require an environmental analysis. The environmental assessment would determine if an analysis should be

done. Senator Klampe stated the cost of the EIS is reflected in FTE. Mr. Lane stated that was a good analysis of the fiscal note, and it is something that can be improved in the note. Mr. Lane stated the .38 FTE would be dealing with the preparation of the environmental analysis of all 24 applicants. Mr. Lane stated the fiscal note would be better had it reflected the fact that some of those fees could be charged to the applicant on a sliding scale.

Senator Devlin asked Les Graham what his comments were on this issue. Mr. Graham stated he agreed with what Mr. Lane said and the whole issue of fees has been addressed. Mr. Graham stated there are game farms which the Department may never have to inspect in person. Mr. Graham stated the issue of fees will continue to be addressed by the parties involved.

Senator Pipinich asked Representative Ream, Bob Lane and Les Graham if they would get together with the Committee's legal council to work out some of the problems stated at the hearing. All three gentlemen stated they would be willing to do so.

Senator Beck asked Bob Lane how the game farms are being handled now. Mr. Lane stated environmental reviews will not be done on existing game farms. Senator Beck asked if it was realistic to expect 24 new applications a year. Mr. Lane stated that was the present rate.

Senator Pipinich asked Representative Ream if it could be worked out so the sportsperson would not be paying the \$45,000. Representative Ream stated something could be worked out.

Closing by Sponsor:

Representative Ream requested the right to close at another time.

HEARING ON HB 341

Opening Statement by Sponsor:

Representative Hal Harper, House District 44, stated HB 341 is a bill without which the DFWP finds it almost impossible to enforce laws currently on the books against illegal introduction of foreign fish to Montana waters. Representative Harper stated this is one of Montana's biggest management problems in terms of fish. Representative Harper stated currently a person has to be caught in the act of releasing fish in the water in order to be prosecuted for violation of law; however, it is too late to do anything about the alien fish being introduced.

Proponents' Testimony:

Al Elser, DFWP, spoke from prepared testimony in support of HB 341 (Exhibit #7).

312-2

ROLL CALL

SENATE COMMITTEE Fish & Game DATE 3-11-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Jacobson	✓		
Senator Bianchi	✓		
Senator Christiaens	✓		
Senator Crippen			✓
Senator Beck	✓		
Senator Mesaros	✓		
Senator Devlin	✓		wn
Senator Brenden	✓		
Senator Klampe	✓		
Senator Forrester	✓		
Senator Pipinick	✓		

ON THE
DATE
CH
3-11-93
HB 338

SENATE FISH AND GAME
1
DATE
HB 338

A GUIDE TO HB 338

COMPILED BY
MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS

In July 1992, Governor Stephens directed his staff to appoint a working group to address and resolve controversial game farm issues. In addition to addressing problems pertaining to regulation of the game farm industry, the group was directed to develop needed legislation. The working group on game farms was comprised of Wayne Phillips (Gov.'s office), Jack Salmond and Jim Hagenbarth (Board of Livestock), Bill Fraser, who was replaced by Cork Mortensen (as Executive Secty., Dept. of Livestock), Elaine Allestad and Bill Stratton (FWP Commission), Pat Graham (deputy director, FWP), Les Graham and Ward Swanser (Mt. Game Breeders Assoc.), Dave Majors (MT Wildlife Federation) and Bob Ream (state representative). Personnel from FWP and D. of Livestock served as staff to the working group.

The game farm working group successfully reached consensus on solutions to a number of major game farm problems and agreed on proposed legislation to address those issues. This summary is intended to facilitate review of HB 338, the product of deliberations of the game farm working group.

HIGHLIGHTS OF HB 338

SECTION 1. 87-4-406. Definitions.

(2) Definition for "facilities" added, to encompass perimeter fences, holding, handling and quarantine facilities.

(old 5) -Deleted- because game farm shooting licenses (carcass tags provided by FWP at a cost of \$15 apiece) will be replaced by a certificate of inspection issued by a D. of Livestock brand inspector.

SECTION 2. 87-4-407. License required -- penalty -- seizure.

(2) Clarifies that operation of an unlicensed game farm and possession of, or trade in prohibited animals are violations.

(3) provides for seizure and disposition of illegally held animals.

SECTION 3. 87-4-409. Application for license -- limitations....

(1) "on forms provided" clarifies that application for a game farm license is to be made on a FWP form.

(1)(c) "the name and address of the individual who will be the principal manager of the game farm" - provides a contact person who is responsible for the actual operation of the game farm (especially important in cases of corporate ownership and where the license applicant is located in another state).

(1)(f) in addition to fences, the term "facilities" includes gates, quarantine, holding and handling enclosures. The "location of perimeter fencing" (legal description, plotted on a topographic map or drawn on a scale map) is information that is prerequisite to evaluating the application.

(old 2) - deleted - (replaced by criteria in NEW SECTION 4).

(new 2, a&b) outline the procedure for review of game farm license applications and requires that the department determine within an initial 30-day period whether an application contains all the information needed for evaluation.

(3) the existing 60 day application review period is replaced by 120 days to provide adequate time for MEPA compliance (completion of an environmental assessment). A provision for an additional 180 days is included for the occasional cases that require an EIS for MEPA compliance. The provision to "approve with stipulations" provides a middle ground....rather than limiting decision on a license application solely to approval or denial. "And approval" of fencing added to reflect current practices.

NEW SECTION 4. Criteria for issuance of license - fencing and enclosure requirements.

(1 a - d) outline qualification criteria for a game farm license applicant and his/her principal manager.

(2 a - e) outline criteria for issuance of a game farm license.

(3a - d) outline criteria for denial or stipulations based on site-specific wildlife and habitat factors (modification of Colorado's language).

(3)(e) addresses public safety hazards related to shooting on the game farm premises.

(4) In the event that FWP proposes to deny or to issue a game farm license with stipulations, the applicant is provided an opportunity to propose mitigation measures, to be considered in the final decision.

(5) provides for commission review of the department's proposed decision regarding a game farm license application.

SECTION 5. 87-4-411. License and renewal fees.

Application and renewal fees were increased with the intention that the cost of game farm regulation studied further to ascertain appropriate cost and whether license fees should be prorated on the basis of acreage or total number of game farm animals....or some other basis. As part of further study of the issue, FWP was asked to begin maintaining record of the costs of administering game farm regulations.

SECTION 6. 87-4-412. Term of license - transferability.

(1) License renewal is contingent on compliance with records and reporting requirements.

(2a-e) provide for transferability of a game farm license if the

transferee meets criteria outlined in Section 4(1); the facilities are in compliance with requirements in effect at the time the original license was issued; and if the game farm is not quarantined - with the stipulations that prohibited species cannot be transferred with the game farm license, and the transfer is not used as a means to evade requirements imposed on the licensee.

SECTION 7. 87-4-414. 'Game farm animals as private property.

(1) "raised" replaced with "possessed"; "property of the licensee" deleted to eliminate the perception that joint ventures are prohibited - and replaced with "for which the game farm licensee is responsible as provided by law" - to clarify that regardless of who owns individual animals on the premises, the licensee is ultimately accountable and responsible for them.

(2) "and in any manner" -deleted- as unnecessary and contradictory to other provisions of the statutes and rules.

(3) provides for marking game farm animals to facilitate animal ownership and individual animal identification

(old 4) deleted "game farm shooting license" (carcass tag) -- which is no longer necessary due to implementation of tattoo inspections by D. of Livestock.

(new 4) Game farm animals must be lawfully acquired by the licensee.

SECTION 8. 87-4-415. Transportation and sale of game farm animals - quarantine.

(old 1) and (old 2) replaced with language that conforms with D. of Livestock procedures for domestic livestock (including use of DOL brand inspectors).

SECTION 9. 87-4-416. Sale of game parts, meats and byproducts.

Changed to conform with D. of Livestock procedures (including use of DOL brand inspectors).

SECTION 10. 87-4-417. Records and Reporting.

Reporting requirements were changed from one report per year to three.

SECTION 11. 87-4-422. Rulemaking.

(1) Provision to accomplish necessary regulatory coordination with DOL.

(2) Several topics added that have been already been addressed through rule-making.

NEW SECTION 12. Revocation of license -- criteria-- penalties.

(1 a-i) outlines criteria for license revocation. The criteria are intended to identify licensees who do not conduct their operations in a responsible manner.

EXHIBIT 1
DATE 3-11-93
483 338

(2) includes a distinction between "negligent" and "willful" misconduct. In situations involving negligence, the licensee will be given notice and an opportunity to remedy the misconduct within 30 days.

(3) lists penalties for misconduct, providing a range of disciplinary actions, including revocation (avoids the dilemma of a choice between no discipline and revocation).

(3b) provides for a civil penalty not to exceed \$5,000, restitution for damages caused, or both.

(4) the penalty for a misdemeanor violation of the game farm statutes and rules is set at \$1000 to conform with other fish and game violations.

NEW SECTION 13. 87-4-423. Revocation of license.

(1) - (4) outline a license revocation procedure and a process for disposition of game farm animals in the event of license revocation.

SECTION 14. 87-4-424. Department restrictions on importation of certain species.

Added "habitat degradation or competition caused by feral populations of escaped game farm animals" - (primary reason for importation restrictions on deleterious species such as aoudad, tahr, chamois, wild hogs, etc.)

NEW SECTION 15.

Entitles a license applicant or licensee to notice and an opportunity for a hearing before an impartial hearing examiner under the Administrative Procedures Act upon denial or revocation of a license, denial of renewal, or withholding consent to transfer a license.

NEW SECTION 16. Repeals 87-4-421 Game farm shooting license

Provisions of 87-4-421 repealed because they have been replaced by D. of Livestock procedures using DOL brand inspectors.

NEW SECTION 17.

Codification Instructions.

NEW SECTION 18.

Effective date is upon passage and approval.

OTHER ISSUES CONSIDERED BY THE WORKING GROUP ON GAME FARMS

It was suggested that following passage of game farm legislation during the 1993 legislative session, a working group on game farms should be formulated to accomplish the following: monitor implementation of new statutes and rules; address topics that were deemed to warrant additional study prior to initiating legislative action; and address items that would more appropriately be implemented through rule-making rather than legislation.

OTHER CONCEPTS BROUGHT UP BY THE WORKING GROUP, THAT WERE EITHER NOT RESOLVED, OR DEEMED TO REQUIRE FURTHER STUDY

- The concept of separating game farm licenses into a number of categories or classes to correspond to one or more of the following attributes: 1) primary purpose of the game farm (i.e. commercial, non-commercial), 2) type of operation (breeding stock, antler production, trophy shooting, venison, photography/filming subjects, etc.); 3) acreage; 4) total number of game farm animals; 5) and/or other criteria. FWP will develop an up-to-date data base that documents status quo. (further study)
- A corresponding fee structure (initial license application and renewal) tailored to various types of licenses and commensurate with the relative amount of regulation required for each license type (with fees possibly prorated according to criteria outlined above - or other factors). FWP will track costs incurred in regulation of existing game farms to provide data for further study of this issue. (further study)
- Separate a shooting license (trophy shooting by clients) from a general game farm license (raising of animals for purposes other than shooting), in part to address public safety issues related to shooting on game farms. This might be accomplished through establishment of several categories or classes of game farm licenses. (further study)
- Disposition of the "base number" of wildlife remaining in a new game farm enclosure after all efforts to remove them have failed. (further study)
- Regulation of antler buyers as a deterrent to trafficking in antlers from illegally taken wildlife (further study).
- Eliminating client shooting on game farms altogether (consensus not possible within the working group)
- Imposing importation restrictions on elk from areas where meningeal worm is endemic. (consensus not possible within the working group)
- Federal or state indemnity program to provide reimbursement for game farm animals destroyed due to bovine tuberculosis. (federal program has been proposed)

DATE 3-11-93
HAB 338

**ISSUES BROUGHT UP BY THE WORKING GROUP
THAT MAY BE MORE APPROPRIATELY ADDRESSED THROUGH
RULE-MAKING RATHER THAN LEGISLATION**

The following ideas and needed clarifications surfaced during deliberations of the working group. The language presented here serves only to document concepts that were discussed by the group and to serve as a starting point for future consideration of rule-making. At several times during group discussions, it was suggested that rule-making may be necessary to reflect new statutes. Needs for rule-making may become apparent as revised statutes are implemented and administered.

POSSIBLE RULE-MAKING NEEDS:

12.6.1507 DEFINITIONS Add a definition of escaped, something along the lines of the following:

(16) "Escaped" means occurrence of game farm animal(s) outside the confines of the game farm perimeter fence, and beyond control of, or out of sight of, the game farm licensee or his/her agent.

12.6.1512 NEW SPECIES (1) To add a new game farm animal species that was not listed in the original application, and therefore not contemplated in design of the existing game farm fences and other facilities, the licensee must submit a new application listing the species desired.

12.6.1517 ESCAPED GAME FARM ANIMALS

Replace the 10-day stipulation for recapture of game farm animals and replace it with the term "reasonable", to allow FWP and DOL to make arrangements with the affected game farm operator that are commensurate with the degree of threat that the escaped animal(s) poses to wildlife populations or domestic livestock.....wording something like this:

(3) The licensee must recapture or destroy the animals within a reasonable time period, as determined by the department of fish, wildlife and parks or the department of livestock. Determination of an appropriate, "reasonable" time period shall be based on the degree of threat posed by escaped game farm animals to native wildlife populations and their habitats, and/or to domestic livestock.

(4) If the licensee is unable to recapture the animals within the time period set forth by FWP and DOL as reasonable, they may be destroyed.

(6) The department of fish, wildlife and parks or department of livestock may inspect a recaptured animal before it is moved from the holding facility to the pasture from which it escaped.

(7) In instances where the escape of game farm animals has been unreported, the animals can be destroyed immediately

Additional topics that may need to be addressed through rule-making include: 1) "Fleshing out" criteria for denial of, or

stipulations to, a game farm license based on site-specific wildlife/habitat criteria; 2) Procedures for disposing of seized animals.

K: 338GUIDE

EX-113 1
DATE 3-11-93
HB 338

REGULATING GAME FARMS IN MONTANA

This information package contains the following titles:

- 1) **Montana Moves to Set Game Farm Operation Standards**
- 2) **Game Farm Questions and Answers**
- 3) **Western States Attempt to Control Game Farm Animals in the Wild**
- 4) **Hybrid Crosses--A Growing Concern For Wildlife Managers**
- 5) **Montana's Game Farm Rules Prohibit Some Exotic Species Imports**
- 6) **Potential Spread of Diseases and Parasites Concern Officials**
- 7) **Game Farm Sources of Information**

REGULATING GAME FARMS IN MONTANA

MONTANA MOVES TO SET GAME FARM OPERATION STANDARDS

Montana is among several western states and provinces that have or plan to revise obsolete game farm rules and statutes. California, Colorado, Idaho, Nevada, North Dakota, Oregon, South Dakota, Washington, Wyoming, and Utah--and Alberta and British Columbia--are updating game farm regulations in the midst of a game farm industry boom that has emerged to take advantage of:

- new and lucrative markets for breeding stock;
- market potential for meat and other animal products;
- Asian demand for certain animal parts--particularly deer and elk velvet antlers;
- interest in shooting penned animals as "trophies."

Meanwhile, a major Tb outbreak on game farms in Canada and discovery of 13 Tb-infected game farm herds in eight states have heightened concerns among wildlife and livestock agencies.

The need for adequate safeguards for wildlife populations and domestic livestock has prompted wildlife and livestock officials in Montana to institute a four-tier game farm regulation program.

New regulations, which went into effect in May, establish:

- (1) Importation requirements for game farm animals, including disease screening and testing.
- (2) Importation bans on species that have the potential to jeopardize the health of Montana wildlife populations through introduction of disease or parasites, or degradation of wildlife habitat through the establishment of feral populations.
- (3) Clear and uniform record-keeping requirements, including individual animal identification standards.
- (4) Minimum requirements for game farm facilities, including fence and equipment standards designed to best restrain, handle, and quarantine animals.

Left unregulated--or loosely regulated--game farms can place wildlife populations and livestock at risk. The risks include:

- introduction and transmission of disease and exotic parasite infection;
- hybridization and genetic pollution of native wildlife populations;
- habitat competition and degradation resulting from the establishment of feral populations of escaped game farm animals;
- impacts associated with locating game farm facilities in critical wildlife habitats, including obstruction of traditional migration routes and displacement of wildlife from traditional winter ranges.

The history of game farming around the world demonstrates that any one of these risk factors can result in permanent, irreversible damage to native wildlife resources, and the expense associated with damage-control activities can demand substantial diversion of funds from existing wildlife management programs.

- fw&p -

SEARCHED
SERIAL 3-11-93
H6 338

REGULATING GAME FARMS IN MONTANA

GAME FARM QUESTIONS AND ANSWERS

Q: Why has the State of Montana become suddenly interested in regulating game farms?

A: Under Montana law, FW&P is charged with regulating the *operation* of game farms. The Department of Livestock is charged with regulating the animal health aspects of game farms.

FW&P has been reexamining game farm issues for the past 15 months. Existing administrative rules, as well as game farm statutes, were not adequately addressing risk factors associated with the growing game farm industry. The need for revised rules became apparent when: (1) elk/red deer hybrids were imported to Montana by several Montana game farmers; (2) bovine tuberculosis was detected in five Montana game farm herds; and (3) reports of animal escapes from several game farms.

Q: Who decides how to regulate Montana's game farm industry?

A: A "game farm working group" was formed in 1992. The group included two members of the Board of Livestock, two members of the FW&P Commission, the executive secretary of the Department of Livestock, the deputy director of FW&P, a representative of the Montana Wildlife Federation, a representative from the Governor's office, a legislator, and two game farm industry representatives.

FW&P and the Montana Department of Livestock have worked closely with the group to develop legislation that represents participation and consensus by all affected interests. Proposed legislation developed by the group is designed to aid the appropriate regulation of the game farm industry in Montana.

Q: What does the proposed legislation address?

A: Highlights of the new legislation include: (1) game farm license qualifications; (2) sale and transportation laws; (3) game farm location criteria and minimum facility standards designed to prevent impacts to major migration corridors and seasonal habitat use areas--including big game winter ranges; and (4) procedures for revoking a game farm license in the event of major violations.

Q: Why does Montana need this legislation?

A: First, Montana's wildlife resources are second to none and the state's livestock industry is an integral part of our culture and economy. Because of the threats some game farm practices pose, Montana--like several other Western-state wildlife agencies--sought to establish sound game farm regulations to protect native wildlife populations and the livestock industry.

Second, Montana's wildlife enthusiasts, its livestock industry, *and* its game farmers recognize that the future of game farming is contingent on good and responsible management practices on the part of all licensed game farmers.

Q: Do current laws allow the state to prevent a game farm license applicant from pursuing a game farm operation in Montana?

A: No. Under existing game farm statutes, the state does not have the authority to deny any game farm application. Granting game farm licenses under current statutes is essentially automatic.

Q: Will this change if the new legislation is approved?

Legislation developed by the governor's working group on game farms establishes specific game farm operator requirements and qualifications. In addition, the legislation would provide FW&P with the authority to deny a game farm license if a game farm is proposed to be located in critical habitats--places where big game animals breed, give birth, rear their young, or winter--or if it would block a major migration route.

Q: What animals are now being game farmed in Montana?

<u>Species</u>	<u>Number of Game Farms</u>
Pronghorn Antelope	3
Barbary sheep	3
Black bear	7
Elk	55
Fallow deer	10
Mouflon sheep & hybrids	3
Mountain lion	13
Mule deer	13
Musk oxen	1
Russian boar	1
Sika deer	6
White-tailed deer	8

- fw&p -

3-11-93
HB 338

REGULATING GAME FARMS IN MONTANA

WESTERN STATES ATTEMPT TO CONTROL GAME FARM ANIMALS IN THE WILD

Because game farm animals have escaped from their enclosures, and wildlife have entered game farms, several Western states and Canadian provinces have adopted measures to improve the regulation of their growing game farm industries.

Listed below are examples of game-farm related problems other states and provinces have experienced. The list is a catalog of the types of problems Montana would like to avoid.

• Canada

- Two-hundred elk "disappeared" from an Alberta game farm. It has not been determined if the animals escaped or if they were illegally transported from the game farm.
- In 1992, a hunter shot an elk in Alberta that is thought to have escaped from a North Dakota game farm.
- In 1991, red deer imported from New Zealand escaped from an Ontario slaughterhouse. The red deer were quarantined because they carried a parasite that is deadly to wild ungulates. The red deer were eventually found and destroyed.
- Four elk, which may have been exposed to Tb, escaped from an Alberta game farm in June, 1990 and were never recovered.

• Colorado

- In 1991-92 wild animals (mostly mule deer) entered 40 percent (16 of 41) of the state's game farms.
- Of 24 recorded escapes since 1974, 18 (75 percent) occurred since 1990 and after the adoption of fencing regulations developed by the game farming industry. The number of escaped animals ranged from one to 100; total escapes exceeded 400 animals.
- In only 33 percent of the reported cases of escaped deer, elk, red deer, and related hybrids have *all* of the animals been recovered.
- At least six escaped "elk" with game farm ear tags were shot by hunters; one "elk" was a red deer hybrid presumed to have bred a number of wild cow elk.
- Escaped game farm animals traveled 5-40 miles.
- Feral populations of ibex, Barbary sheep, mouflon sheep, red deer, fallow deer, and wild boar became established as a result of game farm escapes.
- In 1991, officials reported that Mouflon sheep may have hybridized with Black Canyon bighorn sheep. Extermination measures are being considered.
- Efforts to eradicate a total of eight ibex and Barbary sheep cost \$48,000 (charged to a game farmer), and efforts to removed 18 game farm animals from the wild cost more than \$65,000.
- Since 1988 the Colorado Division of Wildlife has spent more than \$150,000 to control or eradicate exotic animals that have escaped from game farms.

• Montana

- FW&P is currently investigating reports of five game farm elk escapes.
- An escaped game farm elk was shot and left for dead during the 1992 hunting season.
- An escaped game farm elk was killed by a hunter in 1989.
- Two escaped game farm elk were shot by hunters during the 1991 hunting season--one was suspected to be a red deer hybrid.
- Two exotic game-farmed species--in addition to game farm elk--have been free-ranging: (1) mouflon sheep in eastern and western Montana; and (2) fallow deer along the Yellowstone River bottom near Glendive, and the Pryor Mountains near the Wyoming border.
- Both reported and unreported escapes for 1991 and '92 are currently being tabulated.

• New Mexico

- Barbary sheep, originally introduced to provide hunting opportunity, now must be controlled by the New Mexico Game and Fish Department at a cost of \$2,500 per animal. The sheep are causing negative impacts to native wildlife populations.
- Two species of ibex and gemsbok have established feral populations in New Mexico, to the detriment of native deer and desert sheep populations.

• Texas

- Feral populations of nilgai antelope, axis deer, Barbary sheep, sika and fallow deer are well-established.
- A 1988 survey of exotic animals documented 123 species or varieties of exotics in the state. A total of 90,400 animals was confined and an estimated 73,857 were free-ranging, for a combined statewide total of 164,257 (not including feral hogs).
- Recent studies conducted on the Kerr Wildlife Area have demonstrated that axis, fallow, and sika deer can out-compete white-tailed deer.

• Wyoming

- Even though it bans game farms (one has been grandfathered in 1973), Wyoming is collaborating with Colorado in an expensive red deer, Barbary sheep, and ibex eradication program along a common border. Wyoming also had mouflon sheep hybrids in the wild as a result of a trailer wreck in the Wind River Canyon.
- A total of 14 free-ranging exotic animals, which escaped from a game farm in northeastern Colorado, were killed by wildlife officials during the past several years.

- fw&p -

3-11-93
HB 338

REGULATING GAME FARMS IN MONTANA

HYBRID CROSSES--A GROWING CONCERN FOR WILDLIFE MANAGERS

When two animals of different species or genera breed, the offspring are commonly called "hybrids." Next to disease and parasite transmission, some wildlife health experts say hybridization may be the greatest threat to wildlife populations posed by game farming.

The following hybrid crosses are of growing concern to wildlife managers.

Elk with Red Deer: A common cross in New Zealand and on many North American game farms. Free-ranging red deer and elk have hybridized extensively in New Zealand. Elk and red deer have been intentionally crossed on New Zealand game farms to produce "megareds." Genetic screening of captive elk in Colorado indicated red deer hybridization in 13 of 21 game farm herds (10 percent of the individuals tested). Genetic testing of game-farmed elk in Alberta place the hybrid rate at 11 percent. Genetic laboratories in the U.S. and Canada report that between 10-18 percent of all the elk blood samples they examine test positive for red deer hybridization. As the interest in game farming grows, Montana's wildlife managers fear that hybridization between native elk and red deer would compromise the genetic integrity of native elk populations and result in impacts to the appearance, vocalization, behavior, and ultimately their long-term survival.

Since May, 1992, elk destined for Montana have been required to undergo a genetic test at the border, with only elk showing no evidence of hybridization cleared for entry. Unfortunately, genetic screening for elk and red deer crosses is reliable for detecting only first generation hybrids. The test's ability to detect evidence of hybridization declines with each succeeding generation.

Red Deer with Sika Deer: Free-ranging red and sika deer in Ireland have hybridized to the extent that it is now believed that no pure individuals of either species remain. These hybrids could breed with elk and produce offspring.

Elk with Sika Deer: Some game farmers are crossing sika deer and elk to produce an "American sika deer." Use of these American sika deer as herd sires is promoted as a way to "upgrade" Japanese sika deer herds to elk-sized hybrids. These hybrids could breed with elk and produce offspring.

Red deer with Sika Deer with Elk: At the center of a recent court case in Wyoming were 12 red deer/sika deer/elk hybrids that an individual imported into Wyoming. They produced fertile offspring, which could breed with elk.

Axis with Red Deer: This cross produces fertile offspring, which could breed with elk.

Axis with White-tailed Deer: Hybridization is known to occur in penned situations. The offspring could breed with native white-tailed deer.

Mouflon with Bighorn Sheep: This cross produces fertile offspring. Mouflon are thus a threat to the genetic integrity of bighorn sheep populations.

REGULATING GAME FARMS IN MONTANA

MONTANA'S GAME FARM RULES PROHIBIT SOME EXOTIC SPECIES IMPORTS

The problem of game farm animals escaping from their enclosures is well documented. The most common means of escape is through poor fencing, but escapes prompted by uncontrollable events such as floods, wind, fire, drifting snow, falling trees, and animals jumping over, going under, or going through fences during the rut have also been reported.

Due to the potential for escape from game farms--and the subsequent potential for disease transmission, competition with native wildlife species, and hybridization--Montana prohibits the importation of the following animals:

1. Chamois--Native of central and southern mountains of Europe and Asia Minor. Threat: habitat competition.
2. Tahr--Native of Himalayas, Oman, and mountains of southern India. Threat: habitat competition.
3. Ibex--Native to Europe, Asia Minor, and the Middle East. Threat: habitat competition.
4. Barbary sheep--Native to mountains of Morocco, and Western Sahara to Egypt and Sudan. Threat: habitat competition and some disease concerns.
5. Mouflon Sheep--Native to Corsica, Sardinia, and Cyprus. Threat: Readily mates with big horn sheep.
6. Oryx and gemsbok--Native to Morocco, Egypt, Arabia, Ethiopia, and South Africa. Threat: Habitat competition.
7. Addax--Native to western Sahara, Egypt, and Sudan. Threat: habitat competition.
8. Reedbucks--Native to Africa. Threat: habitat competition.
9. Wildebeests, heartbeests, sassabies, blesbok, bontebok, and topi--Native to Africa. Threat: malignant catarrhal fever.
10. Moose--Native to North America. Threat: Introduction or transmission of parasitic infection.
11. Red Deer (and crosses with North American elk)--Native to Europe. Threat: can mate with elk and cause "genetic pollution" in native elk populations.

- more -

EXHIBIT 1
DATE 3-11-93
4B 338

12. Axis deer--Native to India, Nepal, and Sri Lanka. **Threat:** habitat competition with white-tailed deer, and can mate with red deer and white-tailed deer.
13. Rusa deer--Native to Java, Celebes, Timor, Moluccas, and associated islands. **Threat:** habitat competition.
14. Sambar deer--Native to India to Southeastern China, Malay Peninsula, and associated islands. **Threat:** habitat competition.
15. Sika deer--Native to Southeastern Siberia, China, Japan, Korea, and Manchuria. **Threat:** habitat competition, and can mate with red deer and elk.
16. Roe deer--Native to Eurasia. **Threat:** habitat competition.
17. All wild species (and hybrids) in the family Suidae (Russian boar and European boar). **Threat:** habitat competition and transmission of pseudorabies.
18. All species (and hybrids) in the family Tayassuidae (Javelina). **Threat:** habitat competition and transmission of pseudorabies.

The following species are "restricted" due to specific animal health risks they pose to wildlife and/or domestic livestock:

1. White-tailed deer--Problem: Carriers of meningeal worm. Importation of white-tailed deer into Montana is allowed only by game farmers who currently possess and are licensed for white-tailed deer. Only white-tailed deer from states west of the 100th meridian (where meningeal worm is not endemic) can be considered for entry. This provision allows game farmers currently raising white-tailed deer to obtain breeding stock needed to avoid inbreeding.
2. Caribou (reindeer)--Problem: Due to genetic concerns associated with the Montana and Idaho caribou population--and concern about potential transmission of brucellosis type 4 to native wildlife and humans--importation of reindeer into Montana is allowed only when: (1) the animals are from herds located south of the Canada/U.S. border that are certified brucellosis- and tuberculosis-free; and (2) their destination is east of the continental divide.

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REGULATING GAME FARMS IN MONTANA

POTENTIAL SPREAD OF DISEASES AND PARASITES CONCERN OFFICIALS

When animals are moved from one geographic location to another, the parasites and diseases they may harbor are moved with them. In Montana, animal health laws are regulated by the Department of Livestock. However, because of the animal health issues associated with the transportation of wildlife and livestock, interstate coordination and consistency of rules and regulations have become important to wildlife agencies, livestock operators, and game farmers.

Animal health experts warn that diseases and parasites can be quickly spread by: (1) confining animal species not adapted to crowding, (2) mingling species that have never before come into contact, and (3) moving animals from one geographic area to another.

The following is a partial list of parasites and diseases associated with certain game farmed species that pose health risks to wildlife, domestic livestock, and, in some cases, humans.

Brucellosis: The bovine brucellosis bacteria is passed from infected individuals to other animals through oral contact with aborted fetuses and fetal membranes and fluids. Bison in and around Yellowstone and Grand Teton National Parks carry brucellosis. Elk that make use of winter feeding grounds in Wyoming are also infected, with infection rates on some feed grounds ranging from 16-45 percent. There is concern in Wyoming and Montana about the potential for brucellosis to be transmitted from bison or elk to domestic livestock. The brucellosis bacteria causes undulant fever in humans.

Brucellosis (type 4): This type of brucellosis is prevalent in free-ranging caribou and herded reindeer populations in Canada, Alaska, and Scandinavia. The incidence of this brucellosis strain in caribou on Alaska's Seward peninsula is as high as 30 percent. Cattle exposed to infected reindeer later test positive for brucellosis. The type 4 brucellosis is known to be fatal to moose, but because caribou and reindeer do not normally mingle with other members of the deer family, it is not known how exposure affects mule deer or white-tailed deer. The bacteria can be transmitted to humans and is considered by some to present a more serious threat to human health than the bovine brucellosis bacteria. Human deaths attributed to type 4 infections occur most commonly among native peoples in Canada and Alaska.

Tuberculosis: The bacteria can be transmitted via respiratory secretions and other body fluids. Due to limitations of livestock-Tb tests on members of the deer family, AgCanada recommends that a minimum sample size of 200 be tested to identify infected herds. In the U.S., Tb has been found in at least 13 game farm herds in eight states. The USDA has documented Tb transmission from game farm deer to domestic livestock in Pennsylvania, California and New York. In Montana, Tb has been found in five game farm herds. In Canada, Tb has been transmitted from captive deer or elk to a cougar, pigs, domestic cats, llama, and cattle. Transmission of Tb to free-ranging wildlife populations would be a catastrophe. If this occurred, efforts to protect wildlife and livestock would be expensive and

- more -

EXHIBIT 1
DATE 3-11-93
HB 338

likely futile. If Montana's wildlife populations were to be infected with Tb, hunting and other wildlife-related activities would become human health hazards.

Johne's Disease: The slow-growing bacterium causes enteritis in domestic livestock and wildlife. It is spread in the feces of infected animals and may persist in the environment for several months. Johne's disease is difficult to diagnose (and difficult to distinguish from Tb), and is virtually impossible to eradicate or control in the wild. Where it has been documented in free-ranging wildlife, association with infected livestock has appeared to be the source of infection. However, once a wildlife population is infected, it can serve as a reservoir for the disease, dispersing and maintaining the bacteria indefinitely--as is the case with Tule elk at Point Reyes National Seashore, Calif.

Meningeal worm: This parasite causes fatal neurological disease in many ungulates (hooved animals). It is carried by white-tailed deer, which do not show evidence of infection. The worm is prevalent in the eastern U.S. where infection in whitetail populations exceeds 90 percent in some areas. (The dry climate of the Great Plains is thought to have excluded this parasite from the West.) The adult meningeal worm is found in the meningeal covering of the brain in white-tailed deer. Larvae are shed in the feces of their host and eventually penetrate snails or slugs, which are in turn ingested by deer. There are no fool-proof tests to detect infection in live ungulates, nor is there a means to treat infected individuals or populations. Fatal meningeal worm infections have been reported for moose, caribou, elk, mule deer, black-tailed deer, white-tailed deer, and pronghorn antelope, as well as for fallow deer, eland, and sable antelope. While domestic cattle have not been shown to be susceptible to infection, the worm has infected domestic sheep, goats, and llamas. The threat of introducing meningeal worm prompted Alberta to close its borders to importation of all ungulates in 1988. British Columbia followed suit in 1991, banning importation of elk, moose, and deer.

Tissue worm: A close relative to meningeal worm, prevalent in Scandinavia and New Zealand. The worm occurs in muscle tissue as well as in the central nervous system, causing neurological symptoms similar to meningeal worm infection. When infected reindeer from Scandinavia were moved to an island off Newfoundland, the tissue worm parasite was passed to native caribou populations. Red deer and alpacas recently imported to Canada from New Zealand were found to be infected with tissue worm. Alberta recently banned importation of alpacas and llamas to prevent introduction of tissue worm.

Malignant catarrhal fever (MCF): There are two forms of this sporadic, fatal disease that affects ruminants and cattle. The form that occurs in the wildebeest family--wildebeest, topi, hartebeest and blesbok--is caused by a herpes virus. The virus that occurs in domestic sheep has not been identified, but can be diagnosed through a serum test. In any case, it appears that the virus is shed in the respiratory secretions of calves and lambs. While the virus does not affect its host, it is fatal to deer, elk, moose and domestic livestock. Outbreaks in native

deer, elk, and moose, though uncommon, are typically seen in captive herds under crowded conditions. Game-farmed axis deer, sika deer, red deer, blackbuck antelope, and bison are also susceptible.

Pseudorabies (PRV): A viral disease of swine that causes abortion in sows and fatal illness in newborn pigs. Older swine do not show symptoms but can become lifetime carriers. Cattle, sheep, dogs, cats, raccoons, foxes, and small mammals can become infected and die suddenly of virus-induced nerve and brain damage. Surveys conducted have revealed that wild swine commonly harbor PRV. PRV in wild hogs has been documented in Alabama, Arkansas, California, Florida, Georgia, Hawaii, Louisiana, Missouri, Mississippi, Oklahoma, South Carolina, and Texas.

Besnoitosis: Caused by a protozoan parasite found in the bones, tendons, and under the skin of the legs and face of infected caribou and reindeer. Between 21-23 percent of caribou in British Columbia are infected. Although the means of transmission are not known, recent research in France suggests that biting flies may play a role. Besnoitosis does not cause serious health problems in caribou and reindeer, but at a zoo in Winnipeg the disease killed deer housed near infected reindeer. Severe cases of the disease are manifest in sloughing of the skin from the infected animal's head and legs. Deer mortality from besnoitosis has occurred at a wildlife park located near Moose Jaw, Saskatchewan. Musk oxen are also known to be susceptible. Domestic cattle have not been susceptible to besnoitosis infection.

Other Diseases of Concern: Chronic wasting disease, bovine spongiform encephalopathy (BSE), dermatophiliasis and poxviral dermatitis, Brucella ovis, bluetongue and epizootic hemorrhagic disease, arterial worm, and ectoparasites such as ticks, mites and lice.

The 1991 Game Farming Symposium participants recommended that all game farm animals should be examined for evidence of all of the above diseases prior to being cleared for importation to any state or province.

- fw&p -

EXHIBIT 1
DATE 3-11-93
HB 338

REGULATING GAME FARMS IN MONTANA

GAME FARM SOURCES OF INFORMATION

Montana Department of Fish, Wildlife and Parks

- | | |
|---------------------------------------|--|
| 1) Pat Graham
Director
444-3186 | 2) Heidi Youmans
Special Projects Coordinator
444-2612 |
|---------------------------------------|--|

Montana Department of Livestock

- | | |
|--|--|
| 1) Cork Mortensen
Executive Secretary
444-2023 | 2) Don Ferlicka, DVM
Animal Health Division
444-2043 |
|--|--|

Montana Game Breeders Association

- | | |
|--|---|
| 1) Les Graham
Executive Secretary
284-6933 | 2) Ward Swanser
Game farm operator
323-1089 |
|--|---|

Wildlife disease information

- 1) Margo Pybus, PhD
Alberta Department of Wildlife
403-427-3462

Wildlife genetics information

- 1) Peter Dratch, PhD
US Forest Service Forensics Lab
Ashland, Oregon
503-482-4191

Wildlife veterinary medicine information

- 1) Tom Thorne, DVM
Wyoming Department of Game and Fish
307-766-6313

SENATE FISH AND GAME
BILL NO. 2
DATE 3-11-93
BILL NO. HB 338

HB 338
• March 11, 1993

Testimony presented by Bob Lane, Dept. of Fish, Wildlife & Parks
before the Senate Fish and Game Committee

The game farm issues that Montana has been addressing in recent months are not unique to our state - they are regional, national, and even international in scope. The Department of Fish, Wildlife & Parks has focused its attention on several biological issues, namely: 1) introduction of diseases/parasites, 2) hybridization, leading to genetic pollution of native wildlife species, and 3) habitat degradation as a result of feral populations of escaped game farm animals. These concerns are not based on unfounded fears or speculations. These scenarios have played out elsewhere, resulting in permanent, irreversible damage to wildlife resources.

As public servants charged with protecting and perpetuating the state's wildlife resources, we take very seriously our responsibility to prevent these problems and others from occurring in Montana. It became clear about two years ago that existing statutes were inadequate, especially in light of regional and national growth in the game farming industry. About 15 months ago, at the direction of HB 556 passed by the 52nd legislature, Fish, Wildlife & Parks initiated an effort to update outmoded game farm rules and statutes.

Like many of our neighboring states, responsibility for regulating operation of game farms in Montana is shared by the state's wildlife agency and its livestock agency. Within the past year, the Department of Fish, Wildlife & Parks has increased efforts in our areas of responsibility and the Department of Livestock has assumed new regulatory responsibilities. Joint adoption of new rules last spring by Fish, Wildlife & Parks and the Department of Livestock constituted the first step in providing needed protection for Montana wildlife resources and the livestock industry.

Last summer Governor Stephens directed his staff to appoint a working group on game farms. This group was directed to address major game farm issues; to try to come to agreement on how to address them; and develop legislation to be presented to the 53rd legislature. We at Fish, Wildlife & Parks are pleased that a group representing diverse interests could make such significant progress in addressing problems of major importance. We believe that this bill, the product of that group's deliberations, gives both our agencies the tools necessary to effectively regulate this industry. We also believe that this legislative package benefits the game farming industry by clearly defining minimum operating standards.

Due to the complexity of game farm issues, background information is included along with my testimony. For the sake of time, I will touch only briefly on the highlights of this bill:

- Section 1: Deletion of the shooting license (carcass tag issued by FWP) - which has been replaced by an inspection certificate issued by a DOL brand inspector (also mentioned in Sections 7 and 16). Thus the shooting tag requirement no longer serves any purpose. The reasons for this change include: 1) misuse of game farm shooting tags to harvest wild animals and 2) conformation with DOL inspection procedures for domestic livestock.

- Section 3: Outlines a process for review of game farm license applications, outlining FWP procedures in handling of applications and providing for MEPA compliance in FWP decisions regarding licensing.

- Section 4: Outlines qualification criteria for issuance of a game farm license - for both the license applicant and the physical location of the proposed game farm. It also grants the license applicant an opportunity for review of his/her application by the FWP Commission.

- Section 6: Provides for transferability of a game farm license if both the transferee and the facilities meet certain criteria.

- Section 7: Provides for marking of individual game farm animals. The new rules provide for an ear tattoo registered by DOL to indicate animal ownership and a FWP ear tag that facilitates identification of individual game farm animals.

- Section 8: Procedures for transportation and sale of game farm animals were rewritten to conform with DOL procedures, replacing FWP paperwork requirements with inspection by a DOL brand inspector.

- Section 10: Increases required game farm reports from one per year to 3 times per year. This is intended to clear up some long-standing problems with record keeping and reporting requirements. It doesn't triple the needed paperwork...rather, it requires that 1/3 of the currently required paperwork be submitted at the end of each of 3 reporting periods.

- Section 12: Outlines criteria for revocation of a game farm license and outlines a range of disciplines for various violations (providing some middle ground between no action and revocation). Existing statutes are inadequate for FWP to revoke the license of a proven bad operator. Revocation is a means to address problems of concern both to regulators and to the game farming community.

- Section 13: Outlines steps to be followed in a license revocation.

- Section 15: Provides a license applicant with an opportunity for a hearing in cases of license revocation, denial of renewal, or denial of a license transfer.

HB 338

SENATE FISH AND GAME
ENACTED NO. 3
DATE 3-11-93
BILL NO. HB 338

Mr. Chairman and members of the committee, for the record my name is Cork Mortensen, executive secretary to the Board of Livestock. On behalf of that Board I rise here today in support of this legislation.

The Department of Fish, Wildlife and Parks, representatives from the game farm industry and the Department of Livestock have had a number of meetings during the past year and have arrived at a consensus on what we believe to be a workable piece of legislation.

The result in front of you addresses the concerns of the regulatory agencies involved as well as maintains the viability of the game farm industry. The Chairman of the Board of Livestock chaired this committee and he is pleased with the way this proposed legislation came out.

For those reasons, I urge you on behalf of the Board of Livestock to support this bill.

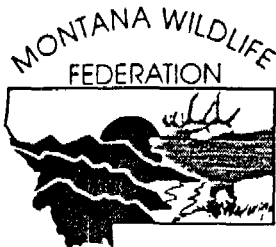
Thank you for your time and consideration in this matter. If you have any questions or need more information, I should be happy to respond.

Sincerely,

Cork

3-11-93

E.E. "Cork" Mortensen, Executive Secretary
To the Board of Livestock



MONTANA WILDLIFE FEDERATION

P.O. Box 1175, Helena, MT 59624 406-449-7604

1990 Outstanding State Affiliate of the National Wildlife Federation

HB 338
March 11, 1993

SENATE FISH AND GAME

EXHIBIT NO. 4

DATE 3-11-93

BILL NO. HB 338

Testimony presented by J.V. Bennett, representing the Montana Wildlife Federation before the Senate Fish & Game Committee

The Montana Wildlife Federation strongly supports HB 338. Populations of captive game animals kept on game farms present a grave danger to native wild game species. This is of considerable concern to the Federation in our role as advocates of both Montana's wildlife and sportsmen. Therefore strong regulation of existing and new game farms is necessary to reduce the threats to Montana's wildlife.

Game farm animals present three major threats to Montana's wildlife: introduction and transmission of disease and exotic parasites, hybridization, and habitat competition or degradation. The history of game farms around the world demonstrates that the occurrence of any one of these dangers can result in permanent, irreversible damage to native wildlife populations.

The trade and transportation of game farm animals creates the very real danger of the introduction and transmission of diseases, including brucellosis and tuberculosis, and exotic parasites, such as meningeal worm and the tissue worm. Currently many of these diseases and parasites are largely absent from Montana's wild game species. However, the importation of game species from other parts of the United States and other countries where these diseases and parasites are common presents not only a danger to wild animals, but also to livestock, and in the case of tuberculosis, humans. Some of these diseases, if established in wild populations, would be virtually impossible to eradicate.

Another danger presented by the possible escape of game farm animals is hybridization, also known as genetic pollution. Many species of non-native game farm animals readily interbreed with native populations. An example of particular concern is red deer interbreeding with American elk. Red deer and red deer hybrids have a competitive advantage over American elk by virtue of the more aggressive breeding behavior of male red deer and red deer hybrids.

Additionally, game farm populations present a danger of habitat competition and degradation. This can occur either through competition in the wild by escaped game farm animals creating feral populations, or by the establishment of game farms on sites needed by native wildlife for breeding, birthing, rearing, migration or wintering.

We also are concerned about the potential for illegal activities prompted by a lucrative market in wild animals and animal parts. Instances of the illegal capture of wild animals have occurred in the United States. Additionally it is possible that unethical game farm operators could use their facilities to traffic in illegally obtained wild animals or parts of wild animals.

It is for these reasons that the Montana Wildlife Federation supports the strengthening of game farm regulations through HB 338. The Federation particularly supports the provisions that allow for revoking licenses for violations, the denial of licenses based on the danger of likely infection of wild species or loss of critical habitat areas, and increased record keeping requirements.

It is hoped that the strengthened regulations will reduce the dangers to wild game populations presented by game farms.

It should also be noted that it is to the game farm industries credit that they also recognize the damage that could be done by either negligent or unethical game farm operators, and that they have been involved developing this legislation and have strongly support it.

Therefore the Montana Wildlife Federation strongly urges the passage of HB 338.

FILED IN THE
SENATE 5
DATE 3-11-93
BILL NO. HB 338

Chairman Pipinich and fellow Fish & Game Committee Members:

I am Ron Bennett from Great Falls representing myself, as well as the Russell Country Sportsmen, the state, the ranchers and even the wildlife conservationists. I am here because it is my belief that the law on game farming should be stricken. The laws, as they are presently written, are wonderful for the game farmers but are not in the best interest of Montana. For clarification, let me explain.

Section 87-4-410, MCA, allows a game farmer to own game animals on his property if they can not be captured or shot. This would have a detrimental effect on Montana's publically hunted-migratory elk population, since most of these elk are on private property at some point during the year. I have attached proposed changes to this Section.

On the other hand, Section 87-4-419, MCA, states that escaped game farm animals can not be recaptured and therefore become property of the state. In the event that an "infected" animal escaped before being detected by the Department of Livestock, the State would be open to liability if this diseased animal infected livestock or in the case of exotic breeds, genetically polluted indigenous species. In either case, if the state owns the escaped animal and the state would be liable. Changes to this Section are attached.

No changes were made in 87-4-10, 13, 18, 19 and 20. Why? With elk antlers in velvet reportedly selling for up to \$100 per pound and out of state hunters paying \$3,500 to \$7,500 for a trophy bull, (Montana Bowhunter, March 1993) it does not take an accountant to figure out that elk farming could be big business, especially if the elk are procured as Section 87-4-410, MCA allows. Recently a game farmer was fined \$1,500 for illegally capturing 80 elk (see attached articles). This is not the only instance. Yet the penalties prescribed in Sections 2 and 12 of HB 338 are minimal. Penalties and enforcement should be a deterrent. Proposed changes are attached.

The costs of many other issues arising from game farming are licensing, environmental impact statements, FW&P's costs, etc. Costs which apparently will be shouldered by Montana sportsmen and women because the licensing fees are a pittance and there is no stipulation for game farmers to bear any of the costs. Refer to the fiscal note, it explains who pays. This follows the trends of today's society. I want it, but you can pay for it! It's called welfare for another segment of society.

I also wonder how the Department of Livestock's requirements got dumped onto FW&P to begin with. The money for Fish & Wildlife comes from the Federal Aid in Wildlife Restoration Act, commonly referred to as the Pittman Robertson Act and from Montana's sportsmen and women's license fees, not from the taxpayers. What does game farming, a business, have to do with

the FW&P? The Department of Livestock should reimburse FW&P for expenses incurred. I wonder what the courts would say about this misuse of money.

HB 338 is basically a license to steal. Not only the funds involved to support game farms, but the loss of wild elk that just happens to wander in an open gate. Yet the sportsmen and women of Montana have to PAY for the privilege.

The members of the house who voted for the bill should be reprimanded. HB 412, calling for a moratorium on the number of new game farm licenses was tabled in committee. If it is not revived and rewritten, you will be leaving a miniature version of the work-comp situation for legislatures to deal with in the next few years. Wyoming, being fully aware of the problems I have noted, has only 1 game farm and will not allow any more. I would conclude that HB 338 is bad for the State of Montana and its sportsmen and women, bad for wildlife conservationists and bad for ranchers of this State. Leaving only the game farmer the one to benefit.

Thank you for your time. I would ask that the Committee consider remedying this transmitted-diseased bill from the House by killing HB 338.

EXHIBIT 5
DATE 3-11-93
HB 338

87-4-410. Removal of game animals. (1) If game animals are present on the land which is to be covered by a game farm license, the license shall be issued but must be conditioned upon the applicant complying with this section.

(2) Before the fence surrounding any such land may be closed, all game animals must ~~be the best possible~~ be driven therefrom by the applicant, at the applicant's expense and under the direction of a representative of the department.

Delete (3) If at the time the license is issued all game animals cannot be removed from the licensed land, the applicant and a representative of the department shall decide the approximate number of remaining game animals of each indigenous species. This number is the "base number".

Delete (4) The department may remove the base number of game animals from the game farm by trapping them within 120 days from the date the number was determined.

delete this line (5) If the department decides not to remove the game animals, *if some* game animals ~~were~~ not successfully removed by trapping, the public must be granted access to harvest those game animals during a special hunt set for that purpose during the next regularly scheduled hunting season. All administrative costs incurred by the department in arranging the special hunt or providing for hunting on the applicant's land during the regular season must be reimbursed by the applicant.

(6) After compliance with this section, any animals from the base number that remain and their property belong to the licensee, and the licensee may deal with them as provided for in this part.

History: En. Sec. 5, Ch. 570, L. 1983.

87-4-411. License and renewal fees — deposit of fees. (1) The department shall charge an initial game farm license fee of \$100 and for each year thereafter shall charge an annual renewal fee of \$25. *See*

(2) The fees must be deposited in the state special revenue fund for the use of the department for purposes of this part.

History: En. Sec. 6, Ch. 570, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

87-4-413

FISH AND WILDLIFE

1106

History: En. Sec. 7, Ch. 570, L. 1983.

87-4-413. Inspection. (1) Upon receipt of an application for a game farm license, the department shall inspect the land proposed to be covered by the license.

(2) After issuance of a game farm license, the department may inspect the game farm or the licensee's game farm books on a scheduled basis or on such other reasonable basis as may be determined necessary.

History: En. Sec. 8, Ch. 570, L. 1983.

87-4-418. Unlawful capture. No person may capture, take, or otherwise acquire any game animal in this state for use on a game farm ~~except as provided in 87-4-410.~~ *no exceptions*

History: En. Sec. 13, Ch. 570, L. 1983.

Game farm owner will be responsible for all costs involved in re-capture or disposal of.
87-4-419 FISH AND WILDLIFE 1108

87-4-419. Escape from game farm — effect. If a game farm animal escapes from a game farm, the game farm licensee shall immediately notify the department of its escape and shall make every reasonable effort to recapture it. If the escaped animal cannot be recaptured within a reasonable time, it becomes the property of the state.

History: En. Sec. 14, Ch. 570, L. 1983.

87-4-420. Taxation. All game farm animals raised on a game farm ~~may~~ be assessed as personal property of the owner.

History: En. Sec. 15, Ch. 570, L. 1983.

Elk rancher fined for capturing wild elk

LIVINGSTON (AP) — A Corwin Springs elk rancher, described as one of the founders of the industry, has been fined \$1,500 for illegally capturing more than 80 wild elk in 1989.

District Judge Peter Rapkoch imposed the fine, saying elk rancher Welch Brogan engaged in "an egregious series of acts and methods of conduct in the operation of this elk farm."

He fined Brogan \$500 for each of three counts, the maximum allowed by law.

Brogan, who has been raising elk just north of Yellowstone National Park for 46 years, was found guilty of two counts of failing to maintain his fences properly and one count of capturing more than 80 elk for use in his operation.

His conviction also means the state could move to revoke his game-farm license.

Eileen Shore, an attorney for the Montana Department of Fish, Wildlife and Parks, said revocation "has been discussed," but no decision has been reached.

Brogan's attorney, Joe Gary of Bozeman, argued at Brogan's sentencing hearing that Brogan would never try to capture wild elk because they would be impossible to sell without proper ear tags and documentation.

In addition, trying to sell wild elk would endanger his permit, putting at risk hundreds of thousands of dollars Brogan has invested in his game farms in Montana and Alaska, Gary said.

Brogan runs a reindeer process-

ing plant in Nome, Alaska, as well as his elk operation in Corwin Springs. He is widely known in the game farm industry and is considered one of the industry's founders.

Capturing wild elk for Brogan's own use would be "jeopardizing his entire lifetime of work in Montana and Alaska," argued Gary, who characterized Brogan's violations as "technical."

Gary insisted Monday that Brogan had no intention of keeping the wild elk wardens saw on his property in February 1989. They were there because a gate had been left open in efforts to recapture an escaped domestic elk, Gary said, and one of Brogan's part-time employees had shut the gate without knowing the elk were inside the pen.

"He's not a violator of laws," Gary said.

New charge filed in game farming

LIVINGSTON (AP) — Another felony charge has been filed against Welch Brogan, the Corwin Springs game farmer whose trial last month on other charges ended in a hung jury.

Brogan appeared Friday in justice court on one felony count of tampering with public records or information.

The incident allegedly occurred last March 9 when Brogan filed an amended report on the number of elk on his game farm, one of the oldest in the country.

Brogan filed that report after game wardens arrested him in February on a felony charge of unlawful possession of wildlife — three cow elk in his pasture.

At that time Brogan's records did not coincide with the number of elk on his property, Deputy Park County Attorney Tara DePuy said Monday, and Brogan filed the amended report.

In December, a jury failed to reach a verdict on the other felony count of unlawful possession of wildlife and the judge declared a mistrial.

Thursday, January 7, 1993

In brief

Helena game farm gets state approval

HELENA (AP) — A game farm license application from Jerry Christison has been approved even though the state didn't have time to properly analyze the proposal and there was strong public opposition, an official said Tuesday.

Christison wants to build a 55-acre game farm off Grizzly Gulch Road south of Helena.

"We didn't hear a word supporting the idea from either the applicant or the game farm industry," said Jerry Wells, regional supervisor for the Department of Fish, Wildlife and Parks. Even so, under existing law, "we didn't have the authority to deny it," Wells said.

The state got 35 written comments and a petition with 167 signatures — all opposing the idea.

However, the permit has five conditions, including a requirement that Christison surround the 55 acres with two fences — each at least 8-feet high and higher in places.

Wells said the double fence is required because of concerns that escaped animals could breed with native animals or spread disease.

5
3-11-93
HB 338

*Federal Aid in Wildlife
Restoration Act*

Lehman - Robertson Act

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0338, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act generally revising the laws relating to the licensing and operating of game farms; eliminating the game farm shooting license; revising definitions, penalties, application procedures, and licensing criteria related to game farm licensure; increasing the license fee; revising animal transportation and sales provisions; revising license revocation criteria and procedures; and expanding record keeping requirements,.

ASSUMPTIONS:

1. Joint rule making by the Department of Fish, Wildlife and Parks (FWP) and the Department of Livestock for transition into joint regulations of game farms, requiring 0.60 FTE, grade 16, at FWP in FY94 only.
2. Twenty-four (24) applications will be received annually with two requiring EIS documentation for MEPA compliance, requiring 0.38 FTE, grade 15, at FWP.
3. Application review will require 4 hours per application, requiring 0.05 FTE, grade 14, at FWP.
4. An equivalent of one FWP field warden FTE and related operation dollars will be required to enforce game farm regulations and to ensure that wild animals are not being trapped by game farm owners. This will be handled through redirection of existing workforce.
5. The Department of Livestock's role with regard to quarantines, inspection, and identification of game farm animals will continue.

FISCAL IMPACT:

Expenditures:

	<u>FY94</u>	<u>FY95</u>
FTE	1.03	0.43
Personal Services	\$35,753	\$14,089
Operations	<u>9,600</u>	<u>4,800</u>
Total	\$45,353	\$18,889

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Revenues:						
Initial game farm license fee	\$2,400	\$4,800	\$2,400	\$2,400	\$4,800	\$2,400
Annual renewal fee	<u>2,550</u>	<u>5,100</u>	<u>2,550</u>	<u>3,150</u>	<u>6,300</u>	<u>3,150</u>
Total	\$4,950	\$9,900	\$4,950	\$5,550	\$11,100	\$5,550

Net Impact: The Department of Fish, Wildlife and Parks will incur a net cost of \$40,403 in FY94 and \$13,339 in FY95. The fiscal impact to the Department of Livestock will be minimal.

David Lewis 2.1.93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

40403
13339
53742

Bob Ream 2-1-93
ROBERT R. REAM, PRIMARY SPONSOR DATE

Fiscal Note for HB0338, as introduced

Removal of Game Farm Animals
Recommended Changes

1. 87-4-410 (2) Delete-to the extent possible.

(3) Delete

(4) Delete

(5) Delete-first line. Add: Any for some
Line 2: Delete were and by trapping.

ADD: THEN - before the public.

(6) Delete

Why should any game animals be left as stock?

2. 87-4-413 Inspection

(2) Line 2: Add: An UNSCHEDULED

Any inspection that is scheduled is a waste of time.

3. 87-4-418 Unlawful Capture

(1) Delete, except as provided in 87-4-410

ADD: no exceptions

4. 87-4-418 Escape from game farm.

(a) Delete: it becomes the property of the
state.

ADD: game farm owner will be responsible for all
cost involved in re-capture or disposal of.

Read the FW&P summary pertaining to regulation of the Game
Farm Industry. Why should the state be responsible for an animal
that could spread what the summary outlines?

5. 87-4-420 Taxation

(1) Delete: May

ADD: Will

Please refer to HB 338

1. Delete: The words approve with stipulations, issued with stipulation, etc. As they appear in the wording. If this bill was constructed so all the loopholes were closed, any stipulations would be unnecessary.

2. Page 3Line 3: Change misdemeanor to felony.

3. Page 5 Lines 7 through 12: Who pays for the environmental impact statement?

4. Page 6Line 11: This is the only time the word "must" is used.

5. Page 7Line 2: Delete: May Add: Will
Line 21 After populations add or livestock.

6. Page 9Line 3: Change \$200 to \$2500

Line 4: Change \$50 to \$500

Line 14: Leave in "not violated"

Line 15: Leave in "line 15" ADD: "and before complied"

7. Page 11 Lines 20-25: Who pays for this?

Page 12 Lines 1-25: Who pays for this?

8. Page 16 Line 16: Delete: repeated.

Line 22: Than they give licensee 30 days to correct?

Line 24: Delete: May Add: Will

Line 25: Delete*

9. Page 17 Line 10: Delete: \$5,000 Add: \$100,000

Line 18: Add "felony" after criminal

Line 19: Delete: \$1,000 Add: \$100,000

Delete: county jail Add: state prison

Line 20: Delete: 1 Add: 5 years

10. Page 18 Line 16: Violations corrected within 30 days?

11. Page 19 Line 9: Change 180 to 30 days

Line 16: Delete: May Add: Will

Line 21: Add: At owner's expenses

5
3-11-93
HB 338

Tom Sands
1312 Austin Crossroad
Columbia Falls, MT 59912
755-6481
755-3257

SENATE FISH AND GAME
ENACTED NO. 6
DATE 3-11-93
BILL NO. HB 338

March 11, 1993

The Honorable Senator Gerry Devlin
Fish and Game Committee
Capitol Station
Helena Montana

Dear Senator Devlin:

I have been made aware of your meeting today at 3:00 and would like to discuss HB 338 with you.

I own an Elk Ranch just northeast of Kalispell, and presently have 24 head of elk on my property. My game farm license is 101.

We need to stress the fact, as is stated in the definitions on page 2 of the bill that a "Game Farm Animal" is defined as "privately owned elk".

I remind you that these are MY animals and I take exception to being regulated by ANYONE, OR ANY AGENCY.

The portion of the proposed bill that I have a big problem with is on page 14, "87-4-417(2) regarding the reports. I have no problem in reporting to the fish and game once a year, but I feel that three times a year is unnecessary, redundant, and only serves to justify bureaucratic jobs.

When I report in January, I show all the Elk on my property which I own or pasture for other owners. A report in April would only be a duplication of this report. The cows calve in June, and the sex of the animals is impossible to detect for several weeks if not months. A report in September may show the wrong sex for an animal which I am not sure of the sex. Keep in mind that you do not walk up to most calf elk. I feed my bulls out of my hands, and several of the cows, but it takes about 6 to 8 months before the calves become used to me enough for me to determine the sex.

Again, I have no problem in reporting once a year, but three times a year is not necessary, and will only produce more paperwork for me and the bureaucrats.

Thank you for your time, please amend this bill to only provide for reporting once a year.

Sincerely,

Tom Sands

DATE 3-11-93SENATE COMMITTEE ON Fish & GameBILLS BEING HEARD TODAY: HB 338, HB 341

Name	Representing	Bill No.	Check One	
			Support	Oppose

Bob Carr	DFWP	338	X	
HEIDI YOUNANS	FUP	338	X	
Ron Bennett	Russell County Sportsmen Ass'n			X
Les Graham	MGBA	338	✓	
Gork Montanese	Board of Livestock	338	X	
Walt Whelan	Mont. Assn. Fish & Game and P. Bear Sportsman Ass'n	341	X	
Steve Bradshaw	MT. Bowhunters Ass'n	HB 338	✓	
Clay Landry	M.T.U.	341	✓	
J.V. Bennett	MT Wildlife Federation	338	X	
RILEY JOHNSON	WALLEYES Unlimited	341		X
Janet Ellis	MT Audubon Leg. Fund	341 338	X X	
AL ELSER	FISH, WILDLIFE & PARKS	341	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Senator Klampe asked Mr. North if DSL and DFWP has the authority to reclassify lands without legislation. Mr. North stated the authority to reclassify lands is already in statute.

Senator Christiaens asked Arnie Olsen if the Department has to have at least a 20-year lease in order to receive Dingle Johnson funds. Mr. Olsen stated DFWP has to show they have control of the land in question in order to receive those federal dollars. A requirement of receiving federal funds is the Department must own the land in question or have at least a 20-year lease.

Closing by Sponsor:

Representative Elliott stated the Enabling Act has not been followed probably since Montana became a state. Representative Elliott said the proposal to privatize any state land is a heinous proposal, and he hoped this never happens in Montana. Representative the responsibilities of the DSL with respect to the school trust is an important point to consider. The land could be sold or leased now for its full market value and perhaps satisfy provisions of the state constitution; or the land could be leased for public recreation benefit and hold it for full market value. Representative Elliott stated the land value of the properties discussed will not go down, and by keeping these lands available for future generations to use as public recreation lands, DSL will satisfy their responsibility to the benefactors of those lands.

EXECUTIVE ACTION ON HB 341

Motion/Vote:

Senator Brenden moved HB 341 be TABLED. The motion CARRIED with Senators Klampe, Bianchi and Crippen voting NO.

EXECUTIVE ACTION ON HB 338

Motion:

Senator Pipinich moved HB 338 BE CONCURRED IN.

Discussion:

Senator Mesaros asked if the hearing had been closed on HB 338. Senator Pipinich stated he had talked with Representative Ream, and Representative Ream stated he would like the record to show that he requested the hearing be closed.

Bob Lane, DFWP, stated the parties involved discussed the possibility of raising the fees and decided they would like HB

338 to remain as is, allowing the ad hoc committee to continue the work on the fee schedule. Mr. Lane stated the committee does not at present have the information needed to address the fees now.

Les Graham, Montana Game Breeders Association, stated the fee is a token fee, and there are a variety of avenues which can be taken in this regard.

Vote:

The BE CONCURRED IN motion on HB 338 CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 576

Motion:

Senator Pipinich moved an amendment to HB 576 to remove "lawful" from the eight places it appears in HB 576.

Discussion:

Senator Beck stated there is some concern that adding the "right to hunt" amendment to the state constitution would allow anyone who comes into the state of Montana to hunt. Bob Lane, DFWP, stated taking out "lawful" may make hunting a fundamental right.

Motion/Vote:

Senator Crippen made a substitute motion to amend HB 576 by striking "and other lawful purposes" following "recreational use" in the four places that language appears. Senator Crippen's amendment CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Beck moved HB 576 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY. Senator Crippen agreed to carry HB 576.

EXECUTIVE ACTION ON HB 607

Motion/Vote:

Senator Mesaros moved HB 607 be TABLED. The motion CARRIED with Senators Bianchi, Christiaens and Crippen voting NO.

Referred to Judiciary Committee: HB 576

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 18, 1993

MR. PRESIDENT:

We, your committee on Fish and Game having had under consideration House Bill No. 338 (first reading copy -- blue), respectfully report that House Bill No. 338 be concurred in.

Signed:

Senator Bob Pipinich
Senator Bob Pipinich, Chair

ROLL CALL

SENATE COMMITTEE Fish & Game DATE 3-18-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Jacobson	✓		
Senator Bianchi	✓		
Senator Christensen	✓		
Senator Crippen	✓		
Senator Beck	✓		
Senator Mesaros	✓		
Senator Devlin	✓		
Senator Brenden	✓		
Senator Klampe	✓		
Senator Forrester	✓		
Senator Pipinick	✓		